Indifferent Justice? A History of the Judges of Kenya and Tanganyika, 1897-1963

Paul Swanepoel

Ph.D.

The University of Edinburgh

2010

DECLARATION

This thesis has been composed by myself from the findings of my own research, except where stated otherwise. It has not been submitted for any other degree or professional qualification.

30 April 2010

ABSTRACT

This thesis examines the history of the judges of Kenya and Tanganyika between 1897, when the first British court was established in Mombasa, and 1963, when Kenya gained independence. The formation of judicial identities and the judiciary's role within the colonial state are the main themes.

The recruitment process into the Colonial Legal Service is discussed. Legal recruitment was both unique and problematic, mainly because there was a shortage of vacancies for newly-qualified barristers. Many were forced to seek employment elsewhere, but for those fortunate enough to secure positions within the barristers' profession the financial rewards were substantial. This led to fears that second-rate barristers who were unable to make a living in Britain applied to serve in the colonies as legal officers. As a consequence, the length of applicants' professional experience became an important factor for recruitment officials.

Aspects of judges' backgrounds are systematically analysed in order to produce a profile of the type of judge who served in the two territories during the colonial period. Judges were among the most mobile of colonial officers and typically served in four or more territories during their colonial careers. These factors shaped their collective identity. At the same time, they partly determined their attitudes towards the various laws they were called on to administer.

In setting out the structure of the courts and the laws that were in force, a number of cases are discussed in order to demonstrate judicial attitudes over time. Two chapters focus on Tanganyika during the interwar period, illustrating divides between the administration and the judiciary regarding the administration of justice. Based on memoirs and personal papers, the professional lives of two judges are traced in order to gauge their views on the political events that surrounded them.

The final two chapters focus on Kenya in the 1950s. The testimony of advocates is used as a means of inquiring into the characters and attitudes of the judges they appeared before. It provides an impression of the legal profession in late colonial Kenya, as both advocates and judges alike defined their professionalism with reference to the legal profession in Britain. The focus then shifts to judicial decisions made during the Mau Mau rebellion between 1952 and 1959, with particular emphasis being placed on the attitudes and professionalism of the judges of the Court of Appeal for Eastern Africa.

The thesis offers a new interpretation of the judiciary's place within the colonial state; by arguing that as a result of remaining part of the barristers' profession in Britain, it suggests that colonial judges found it more difficult to adapt to the realities of functioning within the colonial state than members of other branches of the Colonial Service. This discord contributed to the emergence of a distinct judicial identity in the colonies.

ACKNOWLEDGEMENTS

My first words of thanks are to my friends at the University of Edinburgh for their camaraderie and advice. The list includes master's students, fellow PhDs, postdoctoral fellows and staff members, which attests to the collegial atmosphere that characterises the university, especially the Centre of African Studies. I wish to express my appreciation to the following people: Caryn Abrahams, Rosia Sai Beer, Alex Beresford, Audrey Cash, Chen Yifang, Clare Coughlan Koïta, Markus Daeschel, Lara De Klerk, Setri Dzivenu, Tom Fisher, Marc Fletcher, Joost Fontein, Julie Grant, Joan Haig, Dan Hammett, Rania Hassan, Charlotte Hastings, Sabine Höhn, Hyunchul Kim, Lim Zengsiu, Ashok Malhotra, Laura Mann, Michael Mensah-Ofori, Grasian Mkondozi, Tom Molony, Olga Morawczynski, Louise Müller, Jude Murison, Andy Newsham, Amy Niang, James Pattison, Carolyn Peterson, Shishu Pradhan, Gajendra Singh, Elisabetta Spano, Michelle Taylor, Aya Tsuruta, Annalisa Urbano, Emilie Venables, Meera Venkatachalam, and Ruth Wolstenholme.

In casting about for a thesis topic, two academics were instrumental in enabling me to decide which area of colonial history to investigate. In early 2006, Lawrence Dritsas, then a postdoctoral fellow in Science Studies, sent me an article by the eminent historian Anthony G. Hopkins which stated in a footnote that '[c]olonial legal history is one topic that has been signalled but scarcely explored...'[1] Following a short period of historiographical research, I wrote to Professor David Anderson of St Cross College, Oxford, requesting guidance in selecting a topic within this field. He suggested a few areas that merited attention, one of which was the colonial judiciary. I am indebted to both of them.

This project was a three-way effort throughout, and joint meetings with my supervisors, Professor Paul Nugent and Professor Alan Barnard, were characterised by critical dialogue that often challenged my theoretical approaches. I feel privileged to have been able to draw on the wide experience, intellect and knowledge of both

[1] Anthony G. Hopkins, 'Back to the Future: From National History to Imperial History', *Past and Present* 164 (1999), 222.

academics. I am also grateful to Professor Anne Griffiths who kindly read and commented on the legal aspects of the thesis.

In Nairobi, I greatly appreciate the hospitality and companionship of Puli Sampoorn and Pulley Smita Alankar; Silas Eriola; Graham Barnes; Abraham Félicité; David and Catherine Kibatta; and Daudi Mshana. I am also grateful to Mary Shiruma for her kind-heartedness during my time in Dar es Salaam.

I wish to express my appreciation for the assistance I received from the staff of the various archives and libraries I visited in the United Kingdom, Kenya and Tanzania. In the Kenya National Archives, Peterson Kithuka, Mary Musau and Richard Ambani were especially helpful. Similarly, Lucy McCann at the Rhodes House Library in Oxford, and Guy Holborn at the Lincoln's Inn Library in London deserve special mention.

I am grateful for the assistance given to me by the advocates I interviewed in Nairobi and Mombasa during 2007 and 2008, who included Michael Aronson, Mirabeau Da Gama Rose, Rubeena Dar, Satish Gautama SC, Charles Njonjo, Sam Waruhiu SC, Indravadan T. Inamdar, Sheetal Kapila, M.Z.A. Malik SC, Pheroze Nowrowjee, Keith Osmond, K. Pandya, and Neville Warren. Special thanks goes to Rustam Hira for his hospitality and for giving me much of his time on numerous occasions.

In the United Kingdom, I would like to thank Tony Wilson for sharing his memories of his father, the late Sir Mark Wilson, who served as a colonial judge in Tanganyika. I also thank Paul Heim and the late Ralph Lownie, who served together in the Registrar's Office of the Supreme Court of Kenya in the 1950s, for sharing their memories of their time in Nairobi.

Lastly, I wish to express my sincere appreciation to friends outwith the university who have supported me in this endeavour. The list comprises the following people: Robin Balmer; Betty Bowie; Andrew Brown; Jim and Marion Brown; Michael Cardo; Jo Chadwick; Julia Chang; Ruby Clark; Linda Croxford; John and Jane Curnow-Baker; Gill Dalgleish; Julie Dalgleish; Tricia de Beaux; Tony, Cath, Laura, Maurice, Katrina, Heidi and Romany Drake; Elizabeth Emberton; Les and Ilse-Marie Forbes; Henk and Wilma Gouws; Will Jackson; the late Jean Jardine; Jonathon and Morag Jones; Lorna Langrell; Gareth Lowe; Ed Macdonald; Michelle

MacIntyre; Andrew MacKenzie; Karen McCrum; Julian Murdoch; Julia Murray; Aroldo Rodriguez Malave; Swati Mylavarapu; Norman Nuttall; Gordon and Pauline O'Reilly; Alex and Christine Peden; Donald Peden; Janet Pollard; Andy Rogerson; Rosie Rogerson; Jill Shand; Rhaana Starling; Bill, Fiona and Natalie Sykes; Dan Turkington; Chris Turley; Duane Walker; Howard Walker; Alistair Wellmann; Andy Welsh; and Chitral and Anoma Wijeyesekera.

TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS

AER	All England Reports
CBE	Commander of the Most Excellent Order of the British Empire
CMG	Commander of the Most Distinguished Order of St Michael and St George
CO	Colonial Office
DSA	Dar es Salaam Secretariat Archives
EA	East Africa Law Reports
EACA	East Africa Court of Appeal Law Reports
EALR	East African Law Reports
GBE	Knight Grand Cross of the Most Excellent Order of the British Empire
GCMG	Knight Grand Cross of the Most Distinguished Order of St Michael and St George
HMSO	Her Majesty's Stationery Office
IBEAC	Imperial British East Africa Company
ICS	Indian Civil Service
KB	King's Bench
KBE	Knight Commander of the Most Excellent Order of the British Empire
KC	King's Counsel
KG	Knight of the the Most Noble Order of the Garter
KLR	Kenya Law Reports
KNA	Kenya National Archives
Kt	Knight Bachelor

KCMG	Knight Commander of the Most Distinguished Order of St Michael and St George
LCO	Lord Chamberlain's Office
SC	Senior Counsel
TLR (R)	Tanganyika Law Reports (Revised)
TNA	Tanzania National Archives
TNA: PRO	The National Archives: Public Record Office
RHL	Rhodes House Library
SPS	Sudan Political Service
QBD	Queen's Bench Division
OBE	Officer of the Most Excellent Order of the British Empire
QC	Queen's Counsel

LIST OF TABLES AND FIGURES

CHAPTER ONE

INTRODUCTION

> The dignity of the Bench is maintained not necessarily by a sight of the Occupants of the Bench but by a knowledge that they do their utmost to efficiently and as is said in a much read book "indifferently" administer justice. Law and Justice can as well be administered in a barn as in a palace. This has surely been put severely to the test in this Colony. People in England may not realise the extent of the work which Judges in a Colony have to cope with. They are Judges of the Court of Appeal. They try criminal cases either with juries or assessors. They are Judges of the King's Bench, of Chancery, of the Probate and Divorce Court, and of the Bankruptcy Court. They hear appeals from magistrates in criminal matters or individually in civil matters. They [also] have to do with native law and custom and also with Mohammedan Law.[1]

Sir Samuel Thomas served as a judge of the Supreme Court of Kenya between 1929 and 1933. Like most judges in colonial Kenya and Tanganyika, he had served elsewhere in the Empire, in his case Trinidad and St Vincent. After serving in Kenya, he was posted to Malaya as chief justice.[2] He spent little more than four years in each territory and, partly as a result, felt a greater affinity to the ideals of Empire than to those of the individual territories he served in. As a consequence of being transferred three times, he had less chance to become fully acquainted with the customs and languages of the different territories than other officers, and relied on his expert knowledge of English law and procedure when administering justice.

His words encapsulate the two interrelated themes that form the basis of this thesis: judges' identities, and the role of the judiciary in the colonial state. Judicial identities were shaped by many factors that included their training in English law, their short periods of service in individual territories, their education, and their experience as lawyers before leaving for the colonies. These factors continued to influence the nature and extent of their role in the colonies. Colonial judges saw themselves as 'indifferent', or disinterested, defenders of the rule of law; colonial administrators, however, often dismissed them as being indifferent, in the conventional sense of the word, to the needs of local populations when administering justice in Africa.

---

[1] Cmd. 4623, *Report of the Commission of Inquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika Territory in Criminal Matters* (London: HMSO, 1934), Samuel J. Thomas, Memorandum, Nairobi, 5 April 1933.
[2] *Kenya Staff Lists* (Nairobi: Government Press).

This study of Kenya and Tanganyika's colonial judges begins in 1897, when the first British court was established in Mombasa, and ends in 1963, the year Kenya gained independence. A total of 77 judges served in the two territories during this period.[3] Most came from Britain and Ireland, although there was a small minority from the dominions, and an even smaller number were born in the territories themselves. This introductory chapter comprises four sections. The first section outlines the East African context within which the judges performed their roles. The second section provides a professional context for this group of men who generally defined themselves with reference to their British counterparts. The third section is a discussion of the nature of the colonial state and the place of the judiciary within it. The final section discusses methodological issues relating to the research and provides a summary of the main chapters.

1.1 The Development of Kenya's Legal System

Britain's formal involvement in Kenya began in 1888 when the Imperial British East Africa Company (IBEAC), led by William Mackinnon and formed in 1885 following the Berlin West Africa Conference, was granted a royal charter to administer the territory. The Anglo-German treaty of 1886 provided that Germany would rule what would become Tanganyika, and the IBEAC would administer the territory to the north. The company's rule lasted only seven years, however, and the Foreign Office assumed control of the re-named British East Africa Protectorate in 1895. Construction of the railway between the coast and Uganda began later that year.[4]

The origin and development of a judicial system in the East Africa Protectorate stemmed from the general Acts of the Berlin and Brussels conferences. These imposed obligations on the signatory powers to establish systems of justice in their respective possessions.[5] Between 1900 and 1920, when the East Africa Protectorate was annexed as a colony, the territory was served by eight judges who were an integral part of a small body of government officials, and generally worked closely

[3] The study does not include acting judges or the 'supernumerary' judges who were temporarily posted to Kenya during the Mau Mau rebellion, which began in 1952 and ended in 1960.
[4] George Bennett, *Kenya: A Political History; the Colonial Period* (London: Oxford University Press, 1963), 1-4.
[5] The East Africa Protectorate came into existence in 1895 and was renamed the Kenya Colony and Protectorate in 1920.

with the governor and his secretariat. Following the end of the First World War, Britain was awarded the mandate territory of Tanganyika formerly administered by Germany. A High Court was established in 1920, modelled on the institution founded in 1902 in the East Africa Protectorate.[6]

Sir Charles Eliot, who succeeded Sir Arthur Hardinge as the second commissioner of the East Africa Protectorate, recognised that local custom should be given greater consideration where possible and assented to legislation in 1902 to speed up trials.[7] During the term of one of his successors, Sir Percy Girouard, there was conflict between the provincial administration and the High Court as to the type of law that should be practiced in the African areas and he agreed that official legal policy should be based on both English and African law. Girouard, who was born in Canada and had served in Nigeria under Frederick Lugard prior to his appointment in East Africa, also believed that the Bench was unpopular with a large percentage of the population of the East Africa Protectorate, and he recommended sweeping changes in its composition.[8] This illustrates the fact that an ideological divide between the administration and the judiciary was apparent from early on in the region's colonial history. Regular conflicts between settlers, missionaries, Africans and the administration, which was itself riven by controversy, continued during the interwar period.[9]

1.2 The Judicial System in Tanganyika

In 1885, the German Chancellor, Otto von Bismarck, decided to create a German colony in East Africa. The underlying reasons for German expansion lay in Germany's rapid industrialisation, as well as the political unification of Germany in 1871. The governor of the newly-established colony of German East Africa was empowered to issue ordinances and regulations relating to law and order in the territory; these included determining the jurisdiction of district officers, as well as the

---

[6] Bennett, *Kenya*, 74.
[7] Gordon H. Mungeam, *British Rule in Kenya, 1895-1912: The Establishment of Administration in the East Africa Protectorate* (Oxford: Clarendon Press, 1966), 100-2.
[8] Ibid., 100-2, 213-4.
[9] Robert L. Tignor, *The Colonial Transformation of Kenya: The Kamba, Kikuyu and Maasai from 1900 to 1939* (Princeton, NJ: Princeton University Press, 1976).

punishment and discipline of Africans.[10]

Following the Treaty of Versailles in 1919, Tanganyika became a League of Nations mandate governed by Britain.[11] The League was made up of European powers, most of whom had overseas empires, who did not combat the colonial system but aimed to help it work more ethically. As a consequence, mandate affairs were generally non-political, and the Permanent Mandates Commission's task was generally a passive one: to supervise rather than administer and formulate policy.[12] In addition, the British representative to the League for many years was Lugard who helped to ensure that the general orientation of the Commission was pro-British. In spite of this, however, the Commission played an important role in ensuring that Africans were not grossly misgoverned, and supervised areas such as education, economic policy, land tenure, immigration, defence and race relations. Inter-racial tension was low, and Margaret Bates has argued that the Commission played a role in maintaining this by its very presence. For example, it was described as a 'scapegoat' in tensions between settlers and government, as the latter could point out that its policies were necessitated by the provisions of the mandate. Unlike the situation in Kenya, there were generally no stalemates between settlers and the government, which can partly be attributed to the Commission.[13]

The mandate and trust agreements had a significant effect on development, but the League and its successor, the United Nations, had limited powers of enforcement. As a result, it is arguable that British policy played a more important role, especially in day-to-day administration. In terms of its mandate, Britain undertook to govern the territory for the 'material and social progress of its inhabitants'.[14] If, however, Britain had been a recalcitrant trustee, the history of the territory might have been very different.[15] Endorsing this view, Lord Hailey observed that the Commission was dominated by respected colonial statesmen such as Lugard,

---

[10] Law Reports of the High Court of Tanganyika and the Court of Appeal for Eastern Africa, 1921-52. Vol. I. (Revised) (Dar es Salaam: Government Printer, 1955), v.
[11] Although Britain began formally ruling the territory on 1 February 1920, she only received the official mandate in July 1922. Michael D. Callahan, *Mandates and Empire: The League of Nations and Africa, 1914-1931* (Brighton: Sussex Academic Press, 1999), 49-50.
[12] Margaret Bates, 'Tanganyika: the Development of a Trust Territory', *International Organization* 9, no. 1 (1955), 35.
[13] Ibid., 37.
[14] Ibid., 32.
[15] Ibid.

who described the 'sacred trust' described in Article 22 of the League's covenant as 'only a more precise definition of the ideals of the British Colonial system'.[16] Michael Callaghan, however, offers a different view: that the international status of the territory changed British policy. This resulted in changes in legislation, in particular the founding Tanganyika Order in Council of 1920, a 'heightened sensitivity to outside criticism', and a change from the principles of old-fashioned imperialism.[17] Even so, the mandates system was manipulated by Governor Donald Cameron in his determination to institute the Native Administration system (this is discussed in depth in Chapter 5). This involved the removal of the judiciary's jurisdiction over native courts, and led to the resignation of the chief justice, Sir Alison Russell. Cameron justified his policy by successfully arguing that the reforms gave effect to the views of the League.[18]

1.3 Colonial Rule

1.3.1 Introduction

The rationale for covering the entire colonial period is to cover all three stages of British occupation. William Harvey described these as a brief early period of 'conversionism' to European models; a period of preparation for self-government, what he termed 'modified conversionism'; and the interwar period, characterised by the ideology of indirect rule, 'sandwiched' in between.[19] The period before the First World War was characterised by a sense of common purpose and cooperation between the judiciary and the administration. This was partly a consequence of the small size of both organs of state and the fact that the colonial government was still in the early stages of development. This state of affairs radically changed during the interwar period, particularly during and after the governorship of Cameron in Tanganyika in the 1920s. He instituted the policy of indirect rule, which was founded on the principle that Britain should rule at arm's-length though appointed chiefs. Crucially, these chiefs were granted magisterial powers, which led to conflict

[16] William M. Hailey, *Native Administration in the British African Territories*. Vol. I., Part 1 (London: HMSO, 1979), 211.
[17] Callaghan, *Mandates*, 51.
[18] Ibid., 139-141.
[19] William B. Harvey, *Introduction to the Legal System in East Africa* (Dar es Salaam, Kampala and Nairobi: East African Literature Bureau, 1975), 361.

between judges and administrators when exercising control over native courts. The judiciary began to construct an identity that distinguished themselves from the administration. The adoption of English law and procedure that began in the early period continued, and greater emphasis was placed on recruiting the best British lawyers. The formation of the Colonial Legal Service in 1933 consolidated these developments.

From the start of colonial rule until the Second World War, Britain's rule in Kenya and Tanganyika was virtually unchallenged, but this radically changed during and after the war. The final phase of colonial rule saw a large increase in the number of judges, particularly in Kenya. This was partly because of rapid development in the territories, but mainly because of the growth of an African political consciousness. This manifested itself in a series of African revolts, the most important of which was the Mau Mau rebellion in Kenya between 1952 and 1959.[20] Although judicial independence was compromised, this was a period during which the judiciary enjoyed a greater sense of autonomy in the way justice was administered.

1.3.2 Indirect Rule

By the 1920s, Britain began to downplay her 'civilising mission' and attempted to portray her compromises and weaknesses as sound policy, labelled 'indirect rule' by Lugard during his time in Northern Nigeria.[21] In other words, the British had turned the reformable 'other' of the period of conquest into a 'frozen being' colonial governments now claimed to protect.[22] The policy also suited colonial governments affected by the Great Depression of the 1930s.

John Iliffe's history of Tanganyika remains the authoritative work on the territory, although he makes few references to colonial law.[23] His detailed chapter on the adoption, implementation and ideology of indirect rule during the interwar period provides a useful background to H.F. Morris and James S. Read's legal history

---

[20] Margery Perham, 'Introduction', in Vincent Harlow and E.M. Chilver (eds.) *History of East Africa.* Vol. II. (Oxford: Clarendon Press, 1965), xv.
[21] Anne Philips, *The Enigma of Colonialism: British Policy in West Africa* (London: James Currey, 1989) and Frederick Cooper, 'The Dialectics of Decolonization: Nationalism and Labor Movements in Postwar French Africa', in Cooper and Ann L. Stoler (eds.) *Tensions of Empire: Colonial Cultures in a Bourgeois World* (London and Berkeley, CA: University of California Press, 1997), 411; Frederick D. Lugard, *The Dual Mandate in British Tropical Africa* (London: W. Blackwood, 1926).
[22] Cooper, 'Dialectics of Decolonization', 411.
[23] John Iliffe, *A Modern History of Tanganyika* (Cambridge: Cambridge University Press, 1979).

of the region.[24] Iliffe described the 'invention of tribes' during the 1920s as a 'vast social reorganisation in which Europeans and Africans combined to create a new political order based on mythical history'.[25] Before the 1920s, there were ambitious attempts to remake African societies, with the aim of transforming peasants into wage labourers. This policy ceased during the interwar period in favour of the doctrine of indirect rule. Rather than aiming to civilise Africans, the policy sought to conserve African societies while the Empire profited from peasants' crop production or the output of mines and settler farms. What happened was far more complex than the resuscitation of 'timeless' African tradition, yet European conceptions of Africans continued to focus on the idea of static 'tribes'. Ultimately, indirect rule was an attempt to put a positive light on the colonial failure to remake African societies.[26]

Eric Hobsbawn and Terence Ranger's work on the invention of tradition has transformed the ways in which historians view power relations between both sides of the colonial encounter.[27] Mahmood Mamdani expanded on Ranger's theme, labelling these artificially created chiefdoms as 'decentralised despotisms': illegitimate power structures that continued after independence.[28] Such views, however, are arguably too constructivist: they place too much emphasis on the ability of colonial power to manipulate local knowledge, and on the gullibility of Africans in accepting invented traditions. 'Traditions' were more complex, and required some historical basis and legitimacy in order to have worked as instruments of rule. In addition, Mamdani's work underestimates the multitude of social links that cut across chieftaincies.[29] In Zululand, for example, these processes began long before the advent of colonialism, and it can also be argued that by the 1930s, colonial states had

---

[24] Iliffe, *Modern History*, 320; H.F. Morris and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972).
[25] Iliffe, *Modern History*, 324.
[26] Frederick Cooper, *Africa since 1940: The Past of the Present* (Cambridge: Cambridge University Press 2002), 18; Anne L. Stoler and Frederick Cooper, 'Between Metropole and Colony. Rethinking a Research Agenda' in Cooper and Stoler (eds.) *Tensions of Empire: Colonial Cultures in a Bourgeois World* (Berkeley, CA: University of California Press, 1997).
[27] Terence Ranger, 'The Invention of Tradition in Colonial Africa', in Eric Hobsbawm and Terence Ranger (eds.) *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983).
[28] Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 1996), 65.
[29] John Parker and Richard Rathbone, *African History: A Very Short Introduction* (Oxford: Oxford University Press, 2007), 111.

become 'holding operations', unable to contain or understand the changes they had helped to bring about.[30]

Morris and Read's set of essays on East Africa's legal history is the authoritative text on the administration of justice during the interwar period. They cover a number of subjects ranging from the importation of English and Indian law to the structure of native courts. Importantly for this research, the essays provide a comprehensive description of the controversy between the judiciary and the administration in the 1920s and 1930s based on primary source material in London, Dar es Salaam and Entebbe. They largely fail, however, to address the underlying questions of why colonial judges thought and acted as they did and how they situated themselves within the hierarchy of the colonial state.

1.3.3 Colonial Law

Law was central to colonialism in Africa both in terms of its formulation and implementation by the colonisers, and as it was experienced by the colonised.[31] Laws and courts were vital elements in Britain's efforts to establish and maintain political domination. They were also instrumental in reshaping the organisation of labour to promote the production of exports and the mobilisation of African labour for European enterprises.[32] Law therefore provides a vantage point from which to view the colonial period and its structures, institutions and procedures.[33]

Anthony Allott provided a number of thorough, if legalistic, accounts of colonial Africa's constitutional history, and traced the processes whereby foreign law was imported into East Africa.[34] Eugene Cotran, a former Kenyan High Court judge, has gone further by identifying the salient features of Kenya's legal system such as the dual system of courts; the 'intense participation by administrative officers in the legal system'; the absence of lawyers from the African courts; and the general

---

[30] Parker and Rathbone, *African History*, 113.
[31] Richard Roberts and Kristin Mann, 'Introduction', in Kristin Mann and Richard Roberts (eds.) *Law in Colonial Africa* (London: James Currey, 1991), 3.
[32] Ibid.
[33] Ibid., 4.
[34] Anthony N. Allott, 'The Development of the East African Legal Systems during the Colonial Period', in D.A. Low and Alison Smith (eds.), *History of East Africa*, Vol. III. (Oxford: Clarendon Press, 1976); Allott, *Essays in African Law with Special Reference to the Law of Ghana* (London: Butterworths, 1960); Allott, *Judical and Legal Systems in Africa* (London: Butterworths, 1970).

lack of interest in customary law by the magistrates and judges who staffed the 'English-type courts'.[35]

Yash Ghai and J.P.W.P. McAuslan's work provides an excellent overview of the interrelation of law and political development in Kenya as seen from a lawyer's perspective, although they rely exclusively on reported cases and do not make reference to primary sources. In their view, law was one of the main tools used by the colonial power to establish its presence and it created the colonial framework or 'base-line' that existed at independence.[36]

1.4 The Development of a Judicial Identity

1.4.1 Introduction

With the expansion of Britain's African empire in the late nineteenth century, state institutions such as law and justice were exported to the colonies from Britain, together with legal officers to staff the newly created colonial courts. Officers who joined the Colonial Legal Service were usually appointed as resident magistrates or prosecuting counsel. The overwhelming majority of resident magistrates were professional lawyers and, like stipendiary magistrates in England and Wales, were stationed in the larger towns. By contrast, administrative officers presided over district courts in their capacity as district magistrates. Although some had legal qualifications, very few had practised law in Britain.

Although officers serving in the Legal Service were a unique caste of lawyers quite unlike their British counterparts, many judicial stereotypes originating in Britain have been attributed to them in the secondary literature. For instance, Lewis Gann and Peter Duignan described colonial judges as 'professional jurists, drawn from the ranks of British barristers, incorruptible, competent and enamoured of their dignity'.[37] If this stereotype is an accurate depiction of the typical colonial judge, he

---

[35] Eugene Cotran, 'The Development and Reform of the Law in Kenya', *Journal of African Law* 27, no. 1 (1983), 42-61, 46.

[36] Yash P. Ghai and J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Nairobi and New York: Oxford University Press, 1970), vi-vii.

[37] Lewis H. Gann and Peter Duignan, *The Rulers of British Empire, 1870-1914* (London: Croom Helm, 1978), 237; Robert Heussler expressed similar views in *Yesterday's Rulers: The Making of the British Colonial Service* (Syracuse: Syracuse University Press, 1963). The views of all three scholars have been criticised. For example, Ralph Austen described Heussler's views contained in the introduction to Donald Cameron's autobiography, *My Tanganyika Service and Some Nigeria* (London: Allen and Unwin, 1939), as

would have been an expert in the law; a master of jurisprudence, or legal philosophy; and a man of the utmost integrity and impartiality, with an all-round capacity for dispensing justice in a colonial setting. As a result of his superior judicial knowledge and capabilities, he would have been keenly aware of his superior status in a particular territory, and would have acted with the decorum and gentility becoming of his high office.

For legal advisers in the Colonial Office, advocates and colonial judges alike, the barrister's profession in London was widely revered as the legal 'gold standard'. For instance, barristers were often favoured over solicitors by recruitment officers in the Colonial Office for appointments to the Legal Service, even in cases where solicitors had greater experience and aptitude for service in the colonies. The judiciary, both in Britain and the colonies, has sometimes been treated in the secondary literature as sacrosanct purely on the basis that judges were members of one of the four honourable societies that constitute the Inns of Court in London. In addition, by conflating the two judiciaries some authors have failed to acknowledge and examine the vastly different contexts within which both groups of judges administered justice. The most important difference was that British judges applied English law while colonial judges in Kenya and Tanganyika were called upon to apply a range of laws - English, Indian and customary – something they were often ill-equipped to do given their training as British barristers. Despite this, most chose to perpetuate the arcane traditions and trappings of British courts, such as the donning of wigs and gowns and the maintenance of punctilious forms of address in remote courts. Together with rigid adherence to English procedural law in the courts, these outward manifestations of legal authority came to be of far greater importance to colonial judges than to their British counterparts.

From the founding of the first court in Mombasa until the attainment of independence by Kenya and Tanganyika, this paradigm of the ideal British judge shaped colonial judges' identities, roles and attitudes. It was the prism through which each element of the judges' professional lives were viewed by each level of the colonial system: the Colonial Office; colonial governors and governments; the

---

offering a 'Duignan-and-Gannesque' description of colonial governors as simply 'nation builders who happened to be alien'. Ralph A. Austen, Book Review of Donald Cameron, *My Tanganyika Service and Some Nigeria*, *The International Journal of African Historical Studies* 16, no. 4 (1983), 779.

multifarious peoples to whom the judges' administered justice; and, most importantly, the judges themselves. These elements can be grouped into seven themes, each of which forms the basis of a chapter in this thesis: how judges were recruited into the Legal Service; their education and professional experience in Britain; the organisation of the courts in Kenya and Tanganyika; how day-to-day justice was administered; the judiciary's relations with the executive; relations between judges and barristers; and how judges reached their decisions.

1.4.2 The Barristers' Profession[38]

Many colonial judges fondly remembered their years as students in the Inns of Court in London, and the impressions made during that time continued to shape how they administered justice to the vast array of peoples that populated Kenya and Tanganyika. The organisation of the barristers' profession in England and Wales, known as the Bar, has developed round the four Inns of Court: the Inner Temple, the Middle Temple, Gray's Inn and Lincoln's Inn.[39] These are the governing bodies of the Bar and are Britain's oldest professional institutions. The four Inns consist of benchers, barristers and students. The benchers consist of senior barristers and judges who have the exclusive right of admitting law students to the Bar.[40] Dating from the fourteenth century, they predate by more than a century the creation of the Anglican clergy and the founding of the Royal College of Physicians. It is one of the smallest professions but also one of the most conspicuous, both socially and politically. It is also the most centralised, with the majority of practicing members spending most of their careers within a few miles of the Royal Courts of Justice.[41] Until the sixteenth century, the term 'barrister' was only used within the Inns of Court, and lawyers who appeared in the courts used the older title of 'apprentice'. It did not always follow, however, that all apprentices had the right of appearance in

---

[38] Members of the Bar in England, Wales and Ireland are known as barristers. Their counterparts in Scotland and East Africa are known as advocates. In this thesis, all lawyers who were called to the Bar in Great Britain and Ireland are referred to as barristers, and those who practised in East Africa as advocates. With reference to lawyers' education and professional training, 'Britain' refers to Great Britain and Ireland.

[39] A.M. Carr-Saunders and P.A. Wilson, *The Professions* (Oxford: Clarendon Press, 1933), 7.

[40] Ibid.

[41] Daniel Duman, *The English and Colonial Bars in the Nineteenth Century* (London and Canberra: Croom Helm, 1983), 1.

the courts.[42] This tradition has continued until the present day, and once law students have been called to the Bar, they do not necessarily begin to practise law: there are simply not enough places in the profession to accommodate all the prospective candidates. In other words, there are insufficient barristers to act as 'masters' to potential 'pupils' for apprenticeships lasting 12 months, known as pupillages.[43] The consequence of this is that the majority of barristers have no right of audience in court as they are not in 'chambers' and practising advocacy as the etiquette of the Bar requires.[44]

In the sixteenth and seventeenth centuries there were efforts by some barristers to exclude solicitors from the Inns of Court in order to 'preserve' the inferiority of the solicitors' profession.[45] This was achieved by the end of the eighteenth century.[46] At the same time the Inns, encouraged by the judges, began to insist upon the gentility of their members and encouraged them to 'aspire to the neo-classical ideal of a profession of gentlemen, detached from pursuit of lucre and united in their devotion to a superior vocation'.[47] The result of this was that rules of etiquette developed prohibiting social contact between the two branches of the legal profession, even though each was dependent on the other professionally.[48]

The rigid separation of the two branches was entrenched by a rule prohibiting the admission of a solicitor to an Inn unless he removed his name from the roll of solicitors. The solicitor can best be described as the general practitioner of law, and the barrister a consultant who has specialised in an aspect of the law. It is only in the drafting of documents that the functions of both kinds of lawyers overlap; most importantly, barristers have an exclusive right to appear in the superior courts.[49] Taking instructions from a client and initiating legal proceedings, however, are the

---

[42] J.H. Baker, 'Counsellors and Barristers', *Cambridge Law Journal* 29 (1969), 215; 'Chambers' refer to rooms used a barrister or group of barristers, especially in one of the Inns of Court.
[43] Duman, *English and Colonial Bars*, 4. Pupillage is known as 'devilling' in Scotland.
[44] Baker, 'Counsellors and Barristers', 215.
[45] Ibid., 223.
[46] H.H.L. Bellot, 'The Exclusion of Attorneys from the Inns of Court', *Law Quarterly Review* 26 (1910), 137.
[47] Baker, 'Counsellors and Barristers', 224.
[48] Ibid.
[49] Since 1990, it has been possible for suitably qualified solicitors in Scotland to become solicitor advocates with rights of audience in the Supreme Courts. Similar rights were granted to solicitors in England and Wales in 1994. Those granted these rights are known as solicitor higher court advocates. www.solicitoradvocates.org and www.sahca.org.uk, accessed on 10 March 2010.

preserve of the solicitor.[50] A client therefore consults a solicitor in the first instance, who in turn instructs a barrister to appear in court. As they are acting in the best interests of their clients, solicitors naturally try to select the most able barristers based on their professional reputations.[51] As a result, many barristers struggle to obtain work during their initial years of practise. Carr-Saunders and Wilson illustrate this by recording the popular belief in the 1930s that the most prudent course for a young barrister to take was to ally himself by marriage with the family of a solicitor![52]

In his study of English and colonial barristers in the nineteenth century, Daniel Duman has aimed to shed light on the evolution of the professions more widely. In his view, the Bar is the classic English profession and embodies nearly all the criteria usually associated with professionalism. These include autonomy from external interference; monopoly over practice; possession of esoteric knowledge and skills; corporate unity; and a position of dominance over a clientele dependent upon professional advice. With reference to corporate unity, however, the barristers' profession is quite unlike that of all others. By virtue of being called to the Bar, law students are entitled to style themselves as barristers, but the qualification does not create the corporate identity that membership of another profession would. As the majority of barristers do not practise law, they define themselves according to their principal occupations, rather than their membership of a particular Inn. A sense of corporate identity, therefore, only exists among the minority of barristers who practice their profession in the courts.[53]

1.4.3 The Judges' Profession

For centuries, Britain's judges have been associated with the highly exclusive legal culture that characterises the barristers' profession. The English higher judiciary consists almost exclusively of middle-aged and older men, who have typically practised for 20 years or more as barristers prior to their appointment to the Bench.[54] Barristers with at least ten years' experience at the Bar, as well as solicitors, can apply to become circuit court judges, but barristers have an exclusive right to judicial

[50] Carr-Saunders and Wilson, *Professions*, 10.
[51] Ibid.
[52] Ibid., 11.
[53] Duman, *English and Colonial Bars*, 1.
[54] This term refers to judges collectively.

appointment at the level of the High Court and above. No barrister can become a High Court judge unless he has practised at the Bar for at least ten years; to be eligible for appointment as a judge in the Court of Appeal, applicants are required to be either a High Court judge or to have at least 15 years' experience as a barrister. A system in which barristers are predominant results in a judiciary with a common professional background. In the words of David Pannick, that background has 'educated and trained the aspiring judge on the rules and conventions of court life which play so vital a role in the administration of justice'.[55] Other links between the judiciary and the Bar include the fact that the lord chancellor is responsible for selecting barristers who have made applications to become Queen's Counsel.[56]

In the process of choosing judges, the professional records of the applicants are carefully examined in addition to their private lives and general character. The standards for the appointment of judges share much in common with the standards for their accountability and removal.[57] These general factors include divorce and the factors leading up to it, previous convictions and unprofessional conduct. This last category sometimes refers to barristers who are suspended from practice for misleading the court. Bankruptcy is another factor, as well as personal behaviour: bachelors known to lead 'wild' private lives cannot expect to be considered for appointment to the Bench. Most important, aspirant judges cannot be involved in any kind of public scandal.[58] With regard to personal character, senior judges look for an even temper and good manners. Patience and the ability to listen are also important, although applicants must also display the ability to make quick decisions to avoid a backlog of cases.[59]

For centuries, judicial appointments in Britain have been made on the assumption that experience at the Bar is what gives a man the 'necessary judicial equipment': '[t]he relationship between Bench and Bar is what gives a man the help

---

[55] David Pannick, *Judges* (Oxford: Oxford University Press, 1987), 50.
[56] R.F.V. Heuston, *Lives of the Lord Chancellors, 1940-1970* (Oxford: Clarendon Press, 1987), 30. A Queen's Counsel is a senior barrister, typically with twenty or more years' experience, who is appointed on the recommendation of the lord chancellor. During the reign of a king, the term used for the position is 'King's Counsel'. As a senior officer of the Crown, the lord chancellor is responsible, among other state functions, for the functioning of the courts. Until recently, the office-bearer sat as a judge in the House of Lords, and was a member of the Judicial Committee of the Privy Council.
[57] Shimon Shetreet, *Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary* (Amsterdam and New York: North-Holland Publishing Company, 1976), 61.
[58] Ibid., 62-65.
[59] Ibid., 66.

he needs in the selection and evaluation of the material for his decision'.[60] In other words, a well-informed judiciary is dependent upon a well-informed Bar, as barristers both supply the materials that enable the judge to decide a question of law (in the form of written pleadings[61]) and argue about how the matter should be decided.[62]

1.5 Colonial Theory

1.5.1 The Nature of the Colonial State

One of the aims of the thesis is to explore the nature of the colonial state by examining the role of the judiciary within it. The thesis focuses on the judiciary's contribution to the implementation of colonial power. This section traces the development of the colonial state, described by Bruce Berman as a dynamic process driven by both internal and external contradictions.[63] Importantly, the colonial state was not merely an agent of metropolitan interests and its structures and practices cannot be fully explained from the perspective of the metropole; they were shaped to a large degree by internal social forces in the colonies.[64] The views of scholars on this subject are diverse, ranging from those who saw the colonial state as a strong agent of power to those who believed the colonial state was weak despite its outward show of strength. Much of the literature is concerned with race and how it shaped and defined colonial rule. This thesis moves away from a binary race-based approach, towards a more nuanced argument that best explains the location and role of the judiciary within the colonial state.

Crawford Young promoted the idea of a 'strong' colonial state, arguing that colonial powers neither permitted colonised peoples any politico-economic space nor laid the foundations for it. The requirements for the existence of the colonial state included, among other factors, hegemony, which was established through the use of force; co-optation and law; autonomy from the metropole; security; and legitimacy in the eyes of the colonial power. In his analysis, therefore, there was little room for

---

[60] Patrick Devlin, *The Judge* (Oxford: Oxford University Press, 1979), 43.
[61] Pleadings are consecutive statements, allegations, and counter-allegations made by lawyers acting on behalf of plaintiffs and defendants (in civil matters), or by prosecutors and lawyers defending accused persons (in criminal cases).
[62] Ibid., 46.
[63] Bruce J. Berman, *Control and Crisis in Colonial Kenya: The Dialectic of Domination* (London: James Currey, 1990), 9.
[64] Ibid., 4; Crawford Young, *The African Colonial State in Comparative Perspective* (New Haven, CT and London: Yale University Press, 1994), 35-42.

bargaining between the coloniser and the colonised.[65] On the surface, the colonial judiciary could be described as having the characteristics identified by Young. On closer examination, however, judicial power was more compromised than he suggests. For example, judges in Tanganyika during the interwar period failed to retain their supervisory control of native courts, thereby eroding their authority within the colonial state.

Much of the literature is characterised by its fixation with colonial racist ideology. For instance, Edward Said has used the example of the East to argue for the emergence of literary anthropological and linguistic conventions that generated ideas of western racial difference and superiority.[66] Only occidentals, or white men, could speak of orientals as belonging to the system of rule whose principle was simply to make sure that no oriental was ever allowed to be independent and rule himself: '…since the orientals were ignorant of self-government, they had better be kept that way for their own good'.[67] On the other hand, his concept of 'orientalism' illustrates how impressions of Asiatic societies were woven into the European consciousness: 'colonization was no longer in exotic places, but in the heart of European culture'.[68]

Said's approach has opened up the analysis of a wide range of representations of difference, power and progress. Crucially, the introduction of the terms 'Occident' and 'Orient' - which were seen as part of a unified racial, political, and cultural zone - help to explain how different kinds of political processes became either 'imaginable or inconceivable'.[69] Said's work established a new field of academic inquiry, and his idea of 'orientalism' became a discourse that allowed the creation of a 'general theoretical paradigm through which the cultural forms of ideologies can be analysed'.[70] Marxist accounts point primarily to economic factors when explaining the development of colonialism and imperialism.[71] By contrast, orientalism was a relationship of power and cultural domination, and was considered as the cultural

---

[65] Young, *African Colonial State*, 35-42.
[66] Edward W. Said, *Orientalism: Western Conceptions of the Orient* (London: Penguin, 1995), 228.
[67] Ibid.
[68] Ibid.; Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005), 47.
[69] Said, *Orientalism*, 8; Cooper, *Colonialism in Question*, 47.
[70] Cooper, *Colonialism in Question*, 47.
[71] Robert C. Young, 'Foucault on Race and Colonialism', *New Formations* 25 (1995), 57-65.

equivalent of colonialism.[72] In the main, Said believed that the West subordinated the East through popular discourse, and it presupposed eastern 'difference' to be inferior. He emphasised difference rather than similarity, with the result that the East was always contrasted with the West, rather than being studied in its own right. On the other hand, Valentin Y. Mudimbe has asserted that much of colonial discourse represses 'otherness' in the name of 'sameness', thus escaping the task of making sense of other worlds.[73]

Homi Bhabha further elaborated on the rule of difference: 'the objective of colonial discourse is to construe the colonized as a population of degenerate types on the basis of racial origin, in order to justify conquest and to establish systems of administration'.[74] He added to Said's analysis by introducing the concept of 'fixity' into the ideological construction of his concept of 'otherness'. As a sign of cultural, historical and racial difference, 'otherness' was a paradoxical mode of representation: rigidity and an unchanging order, as well as disorder and degeneracy.[75] Orientalism was, therefore, a process of ambivalence.[76] Bhabha described the colonial state as an vacillating 'colonial fantasy': on the one hand it was prepared to concede that under certain conditions of colonial domination and control the 'native' was progressively reformable; on the other hand, it emphasised the 'separation' between the two cultures as a means of denying self-government and progress for the colonised.[77]

As a result of this 'colonial contradiction', colonialism was, therefore, split in its knowledge and exercise of power.[78] By 'knowing' the 'native', authoritarian forms of political control were justified. At the same time, progressive forms of social and economic forms of government were often allowed, which provided justification for colonial rule.[79] Despite his valuable contributions towards a greater understanding of the colonial state, Bhabha has been criticised for developing 'metaphoric colonizations' distinct from the institutions through which colonial power was

---

[72] Young, 'Foucault', 57-65.
[73] Valentin Y. Mudimbe, *The Invention of Africa: Gnosis, Philosophy and the Order of Knowledge* (London: James Currey, 1988), 72.
[74] Homi K. Bhabha, *The Location of Culture* (London and New York: Routledge, 1994), 70.
[75] Ibid., 66.
[76] Ibid., 70.
[77] Ibid.
[78] Paul Nugent, *Africa Since Independence: A Comparative History.* (Basingstoke, Hampshire and New York: Palgrave Macmillan, 2004), 11.
[79] Bhabha, *Location of Culture*, 82-83.

actually exercised, such as courts and colonial legislatures.[80] As a result, he often left the coloniser and colonised interacting with each other, independent of anything except their mutual relationship.[81] By contrast, this study is concerned with the men and institutions through which colonial law was administered. Judges were able to escape the colonised-coloniser paradigm to a far greater degree than administrative officers as their forums were more 'remote'. They also, through the circuit court system, administered 'transient justice', which contrasted with the day-to-day decisions made by district commissioners, who were permanently stationed at the 'interface' between coloniser and colonised.

1.5.2 Colonial Power

Like Said and Bhabha, what was distinctive about colonial power to Partha Chatterjee was its 'rule of colonial difference'.[82] This concept was a central part of his 'universal theory of the modern regime of power': the colonised being represented as inferior, and as the 'Other'.[83] In his view, race was the defining factor of this rule of difference.[84] He wrote of India, but it is questionable whether this rule of difference operated in the same way throughout the Empire over the entire colonial period. For example, the African colonies present differently configured modes of organised power and different political rationalities during colonial rule.[85]

Despite the absence of explicit writings about colonialism, Michel Foucault's work has nevertheless been used as a theoretical base for other writers, in particular Said.[86] His concept of political rationality helps to understand the structure of the colonial state: within the structures and projects that made up colonialism, there were different political rationalities and different ways in which power was organised. For instance, colonial powers sometimes included or excluded Africans in their political structures. Race was still important, but there was a need to distinguish different

---

[80] Cooper, *Colonialism in Question*, 47.
[81] Ibid.
[82] Partha Chatterjee, *The Nation and its Fragments: Colonial and Postcolonial Histories* (Princeton, NJ: Princeton University Press, 1993), 32.
[83] Ibid., 19.
[84] Ibid.
[85] David Scott, 'Colonial Governmentality', *Social Text* 43 (1995): 196.
[86] Young, 'Foucault', 57-65.

modes of organising colonial power and the different political rationalities on which these modes depended.[87]

Crucially, Foucault recognised the need for a credible theory of power in order to understand power relations within a state:

> …while the human subject is placed in relations of production and of signification, he is equally placed in power relations which are very complex. Now it seems to be that economic history and theory provided a good instrument for relations of production; that linguistics and semiotics offered instruments for studying relations of signification; but for power relations we had no tools of study. We had recourse only to ways of thinking of power based on legal models, that is: What legitimates power? Or we had recourse to ways of thinking about power based on institutional models, that is: What is the state?[88]

He described the state as being a triangle of power: sovereignty, discipline and governmental management, which had population as its main target, and apparatuses of security as its principal mechanisms.[89] Colonial governmentalities covered a wide range of scenarios: how to govern oneself, how to be governed, how to govern others, by whom people will accept being governed by, and how to be the best governor.[90] To Foucault, sovereignty symbolised the absolute rule of the sovereign, who directly applied the law. Governmental management, on the other hand, used tactics instead of laws. In the words of Jeremy Bentham, the government sought to '…design the institution so that people, following only their self-interest, do what they ought'.[91] Drawing on his work on the French penal system, Foucault described governmental management in the following terms: 'all the activity of the disciplined individual must be punctuated and sustained by injunctions whose efficacy rests on brevity and clarity; the order does not need to be explained or formulated; it must trigger off the required behaviour and that is enough'.[92]

---

[87] Young, 'Foucault', 197.
[88] Michel Foucault, 'The Subject and Power', in John Scott (ed.) *Power: Critical Concepts* (London: Routledge, 1994), 218-219.
[89] Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-78* (Basingstoke, Hampshire: Palgrave Macmillan, 2007), 107.
[90] Graham Burchill, Colin Gordon and Peter Miller (eds.) *The Foucault Effect: Studies in Governmentality* (London: Harvester Wheatsheaf, 1991), 87-88.
[91] Jeremy Bentham, *A Fragment on Government* (Cambridge: Cambridge University Press, 1988 [original 1776]), xxii.
[92] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (London: Penguin, 1991 [original, 1975]), 166.

David Scott has applied these ideas to nineteenth-century Ceylon, where colonial court procedures constrained the 'native's' behaviour in a certain direction. Crucial was the overseeing 'eye' of the European judge and the regulatory techniques that reached down to the motives of the criminal. These not only constrained or induced the native to change but also to appreciate the difference between his 'wrong' ways and the 'correct' ways of the government. In other words, rather than ruling in an autocratic manner, colonial government rationality organised procedures so that the 'native' was made to work upon himself in order to be recognised as a productive agent.[93]

As a result, rulers and ruled were brought into a new and different relationship, a new field for producing effects of power that were not merely the product of the state apparatus. Foucault's point was not the banal one that the forms of the state were simply replicated in the colonies. Rather, he reinforced the need to understand the project of colonial power at certain historical moments through the character of the political rationality that constituted it.[94]

1.5.3 Conflict within Colonialism

Another important debate on the nature of the colonial state concerns the internal fissures within the various European colonial societies and governments. The French anthropologist Georges Balandier, noted for his work in sub-Saharan Africa, stressed the need to view the 'colonial situation as a single complex, as a totality'.[95] He believed that economic, social and racial questions were closely interrelated, and that more attention should be given to the role of the judicial and administrative apparatuses within a single unit of analysis.[96] In formulating his analysis, he drew on Max Gluckman's work in Zululand, which moved away from the idea of bounded ethnic groups by including whites, blacks, officials and subjects within the same framework.[97] Similarly, Bronislaw Malinowski stressed the need to abandon what he termed 'one-column entries' on African societies and focus on the 'no-man's land of

[93] Scott, 'Colonial Governmentality', 213.
[94] Ibid., 204.
[95] Georges Balandier, 'The Colonial Situation: a Theoretical Approach', in Immanuel Wallerstein (ed.) *Social Change: The Colonial Situation* (New York: Wiley, 1966), 42.
[96] Ibid.
[97] Max Gluckman, *Analysis of a Social Situation in Modern Zululand* (Manchester: Manchester University Press, 1958), 1.

change', to attend to the 'aggressive and to be aware that 'European interests and intentions' were rarely unified but more often at war.[98] Ann Stoler has also pointed to frequent conflation by scholars of the makers of colonial policy with authorities on the ground. She highlighted the dangers of becoming sensitised to the divisions between ethnicity, gender and class among the colonised, as well as the tendency to take the dichotomy of coloniser and colonised as a given, rather than as a shifting set of social categories.[99]

As a consequence, European communities have received far less attention than their African counterparts, and are frequently treated as diverse but not problematic.[100] Stoler countered this idea by describing colonial cultures, of which colonial judges formed a part, as 'unique cultural configurations, homespun creations in which European food, dress, housing and morality [that] were given new political meanings in the political social order of colonial rule'.[101] In her view, settler colonies were based on new constructions of Europeanness, and their populations were artificially divided into demographic, occupational and political groups.[102] Importantly for this study, Cooper observed that historians cannot probe the complexity of African initiatives and responses to foreign intrusion without examining the colonial side of the encounter in equal depth.[103]

Similarly, Ranger did not restrict his analysis to the African side of the colonial encounter, but also focused on the invention of tradition by the British, both among government officials and settlers. Between the 1870s and the 1890s, many European powers invented traditions in all areas of public life, such as the role of the church, the education system, the military, and the monarchy. The concept of Empire was central to the process of inventing traditions for the colonisers. Settlers in Kenya and Southern Rhodesia had to define themselves as masters, and drew on invented traditions to define and justify their roles and to provide models of subservience. Invented upper middle-class school, professional and regimental

---

[98] Bronislaw Malinowski, 'Dynamics of Culture Change', in Immanuel Wallerstein (ed.) *Social Change: The Colonial Situation* (New York and London: John Wiley and Sons, 1966), 14-15.
[99] Ann Stoler, 'Rethinking Colonial Categories: European Communities and the Boundaries of Rule', in Nicholas B. Dirks (ed) *Colonialism and Culture* (Ann Arbor, MI: University of Michigan Press, 1992), 319-321.
[100] Ibid.
[101] Ibid., 321.
[102] Ibid., 321 and 342.
[103] Cooper, *Decolonization*, xi.

traditions in Britain were used for command and control in the colonies. Unlike the situation in the colonies, however, these traditions were balanced in Britain by the invented traditions of the industrial classes.[104]

This body of work helps to interpret one of the key themes of the thesis: ideological conflict between the administrative and judicial branches of the Colonial Service. There was evidence of this soon after the East Africa Protectorate was created, and continued until the 1940s. The main differences of opinion concerned the kinds of law that were administered, and the question of whether it was in the best interests of Africans if district commissioners or professional magistrates exercised control over native courts.

1.6 The Colonial Service

Benedict Anderson defined the term 'nation' as 'an imagined political community…imagined as both inherently limited and sovereign'.[105] He argued that nations were not the determinate products of language, race or religion but were imagined into existence and viewed the British Empire as a 'grab-bag of primarily tropical possessions scattered over every continent'.[106] His idea that communities are distinguished by the style in which they are imagined, often as a bond of comradeship, can be applied to the group of officials who served throughout the Empire as part of the Colonial Service.[107] Anderson's works sheds light on the world of the typical colonial officer, a world that consisted only of Britain's possessions outside India. It was a world where some officers were stationed in a single territory for their entire careers, while others were frequently transferred. The Empire was a political community that was built and sustained by the imaginations of officials in Colonial Office, as well as those who served in the colonies.

Anthony Kirk-Greene has recognised the value of researching Britain's overseas administrators in order to understand colonialism as a phase of imperialism.[108] A number of studies of the various colonial services deal with the

---

[104] Ranger, 'Invention of Tradition ', 211.
[105] Benedict R. O'G Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991), 6.
[106] Ibid., 6, 92.
[107] Ibid., 6-7.
[108] Anthony H.M. Kirk-Greene, 'The Sudan Political Service: A Profile in the Sociology of Imperialism', *International Journal of African Historical Studies*, Vol. 15, no. 1 (1982), 21.

origins, recruitment, beliefs and actions of colonial officers, although insufficient attention has been given to the structural forms of the colonial state itself.[109] Although Berman has described this body of literature as 'self-consciously empiricist' and 'atheoretical', these studies make a significant collective contribution to the study of colonialism.[110]

Charles Jeffries's account of the Colonial Service remains the foremost authority on the subject, although his work, like most of the literature on the Colonial Service, is focused on the Administrative Service at the expense of its legal counterpart.[111] Kirk-Greene's analysis of gubernatorial careers is particularly useful, especially his work on transfers and promotions.[112] He has also produced an interesting article on the Sudan Political Service, a body that enjoyed a reputation among Britain's imperial administrations as second only, or even equal to, that of the Indian Civil Service (ICS).[113] More widely, the problems of proving that the ideas of officers determined historical events is illustrated in Clive Dewey's study of two officers in the Indian Civil Service.[114] He traced the professional lives of two officers who represented conflicting views on how India should be administered: one favoured a paternalistic approach, while the other adopted a 'friendly' approach. In order to establish the links between their 'conditioning and their careers', he asserted that officers were 'prisoners of the values they absorbed in youth'.[115] The officers, fresh off the boat, found that Indians, unlike their fellow Englishmen, 'overflowed

---

[109] Heussler, *Yesterday's Rulers*; Heussler, *The British in Northern Nigeria* (London: Oxford University Press, 1968); Huessler, *British Tanganyika: An Essay and Documents on District Administration* (Durham, NC: Duke University Press, 1971); Gann and Duignan, *Rulers of British Africa*; Gann and Duignan (eds.) *African Proconsuls: European Governors in Africa* (New York and London: Free Press, 1978); Mungeam, *British Rule in Kenya*; Henrika Kuklick, *The Imperial Bureaucrat: The Colonial Administrative Service in the Gold Coast, 1920-39* (Stanford, CA: Hoover Institution Press, 1979); I. F. Nicolson, *The Administration of Nigeria, 1900-1960: Men, Methods and Myths* (Oxford: Clarendon Press, 1969); Kirk-Greene, *A Biographical Dictionary of the British Colonial Governors*. Vol. I.: Africa (Brighton: Harvester, 1980).

[110] Berman, *Control and Crisis*, 9.

[111] Charles Jeffries, *The Colonial Empire and its Civil Service* (Cambridge: Cambridge University Press, 1938).

[112] Kirk-Greene, *On Crown Service: A History of HM Colonial and Overseas Civil Services, 1837-1997* (London: Macmillan, 2000) and Kirk-Greene, 'Scholastic Attainment and Scholarly Achievement in Britain's Imperial Civil Services: The Case of the African Governors', *Oxford Review of Education* 7, no. 1 (1981), 11-22.

[113] Kirk-Greene, 'The Sudan Political Service: A Profile in the Sociology of Imperialism', *International Journal of African Historical Studies* 15, no. 1 (1982), 21. Officers in the Sudan Political Service were noted both for their sporting prowess and intellectual ability and offer an interesting contrast to the backgrounds of officers recruited into the Colonial Service.

[114] Clive Dewey, *Anglo-Indian Attitudes: The Mind of the Indian Civil Service* (London: Hambleden Press, 1993).

[115] Ibid., vii.

with emotional reassurance and practical assistance'.[116] After a few years, however, their work as judges and tax officers caused them to change their attitudes after experiencing the 'penchant for perjury and…love of intrigue' of two of their subjects.[117]

One of the problems of drawing parallels with India is that historians writing about the subcontinent tend to conflate the practices of colonial officials in India with those who served in the Legal Service. For instance, Terence Johnson claimed that lawyers often found themselves in a conflict situation within systems of state patronage, as India's legal service was integrated with the executive. It was normal for legal and administrative functions to be fused in a single office such as that of a collector in India or a district officer in Africa, and legal officers were primarily oriented towards local administration. In the superior courts in India there was also an overlap, as High Court judges were often appointed from among the administrative officers who had reached the peak of their career potential and were 'retired' to the Bench. Johnson quoted Marx as saying '[i]n India it seems to be assumed that if a man is fit for nothing it is best to make him a judge, and get rid of him.'[118] This was not the case in Kenya and Tanganyika, however, where judges remained a special caste of lawyers who strove to maintain their judicial independence.

British policy in West Africa generally aimed to inhibit rather than hasten change, as many officials looked to feudalism rather than capitalism when implementing colonial policies.[119] This led Heussler to focus on patterns of recruitment to the Colonial Service, and he suggested that these produced the distinct type of colonial servant sought by the Colonial Office.[120] Officers were drawn disproportionately from the younger sons of the lesser-landed aristocracy, who found few openings in Britain, and were uncomfortable with the values of the contemporary capitalist word. Heussler described Ralph Furse, the official responsible for

---

[116] Dewey, *Anglo-Indian Attitudes*, 202.
[117] Ibid.
[118] Karl Marx, *The New York Daily Tribune*, 20 July 1853, reproduced in Shlomo Avineri, *Karl Marx and Moderization* (Garden City, NY: Doubleday Anchor), 117, cited in Terence Johnson, 'Imperialism and the Professions', in Paul Halmos (ed.) *Professionalisation and Social Change* (Keele: University of Keele, 1973), 302.
[119] Phillips, *Enigma of Colonialism*, 3.
[120] Heussler, *Yesterday's Rulers*, 69.

recruitment into the Colonial Service, as being 'unswervingly aristocratic' in his predilections.[121] The values and attitudes of the typical prospective applicant were such that

> …modern industrialisation and urbanisation were anathema to him, as were the *nouveaux* who epitomised these trends. He cared little for money as such; he preferred the country to the city, and was usually happy in an exclusively male society.[122]

Anne Phillips has asserted that this explanation for the anti-capitalist bias of various colonial governments is unsatisfactory. In her view, however *ad hoc* colonial policies appear to be, they cannot be attributed to the attitudes of a single recruitment officer. In West Africa, for instance, large-scale European settlement was not possible for climatic reasons; as a result, 'African development' was favoured and West African governments were praised for preserving the peasantry and delaying the onset of wage labourer.[123] On the other hand, Kenya was situated midway between peasant and settler production, which led to far-reaching contradictions within the colonial state. On both sides of the continent these wider phenomena had a far greater impact on the politico-economic development of the various territories than the 'autocratic paternalism' of administrative officers.[124]

1.7 Methodology and Chapter Summary

1.7.1 Identity

In colonial historiography, the analytic categories of the present are often confused with those used in the past. This results in erroneously attributing ways of thinking to historical actors that may not have been available to them. This approach, labelled by Cooper as 'doing history backwards', also risks missing what historians cannot see, such as the paths not taken, or the various options that were available in historical

---

[121] Heussler, cited in Phillips, *Enigma of Colonialism*, 4. Ralph Furse was appointed as assistant private secretary in charge of appointments in 1910. Except for war service between 1914 and 1919, he remained responsible for Colonial Service recruitment until 1948, after which he served an additional two years as an adviser. Charles Jeffries, *Whitehall and the Colonial Service: An Administrative Memoir, 1939-1956* (London: Athlone Press, 1972), 7.
[122] Phillips, *Enigma of Colonialism*, 4.
[123] Ibid.
[124] Ibid., 159.

settings.[125] Archival research reinforces the importance of being aware of differences between the frameworks of past actors and present interpreters.[126]

During the process of gathering written and oral evidence for this thesis, it proved necessary to draw on certain theoretical concepts, the most important of which is 'identity'. Although widely used in the humanities and social sciences, the term is often misunderstood.[127] On a personal level, 'self-understanding' is a term that describes 'situated subjectivity': one's sense of who one is, and of one's social location.[128] It refers to the practical, cognitive and emotional sense of identity that describes people's perceptions of themselves and their social world. This perspective focuses on personal experiences and perceptions, and prioritises cultural and social aspects.[129] In another sense, identity can be understood as a collective phenomenon, and demonstrates a fundamental 'commonality' among members of a group.[130] This sense of 'identity' is used in Chapter 3, which probes the complex mix of variables such as social origin, education, professional training, and length of service in order to assess whether or not there was in fact a collective identity and if so, to judge the relative strength of its connectivity. There is, however, a second meaning of 'identity' in the collective sense, which is especially relevant for this study. This is the sense of belonging to a distinctive and defined group, known as 'groupness', which involves both a sense of solidarity or unity with fellow group members, and a 'felt difference or even antipathy to specified outsiders'.[131] 'Groupness' refers to an identity based on exclusiveness and, in some cases, hostility to outsiders.

Rather than relying on a common-sense meaning of identity that emphasises sameness over time or across persons, this thesis uses four meanings of identity (self-understanding, commonality, connectedness and groupness). The first three kinds have been explored in a number of studies on officers who staffed various branches of the Colonial Service. What distinguishes this study is the colonial judges' sense of 'groupness'. Although their identities were shaped by a wide range of factors, such as

---

[125] Cooper, *Colonialism in Question*, 18.
[126] Ibid., 19.
[127] Ibid., 59-90.
[128] Ibid., 73.
[129] Ibid., 73-74.
[130] Cooper defines 'commonality' as the sharing of common attributes; 'connectedness' refers to the relational ties that link people. Ibid., 76.
[131] Ibid., 75.

education, personal experience and service in the colonies, judges were primarily united by a sense of exclusiveness, which was characterised by its defensive nature. Colonial doctors in East Africa, for example, were also united by their exclusivity, but this was a result of them, like the judges, simply being members of a common profession.

1.7.2 Primary Sources

Although colonial East Africa comprised Kenya, Tanganyika, Uganda, and Zanzibar, the study includes only the first two territories. This is for a variety of reasons, the most important being the feasibility of conducting historical research, both oral and archival, across the entire region. It was only possible to travel to Kenya and Tanzania to inspect archival records and interview retired advocates, and those territories were therefore selected as the focus of the thesis. Even if access to primary sources in all four territories had been possible, it would have been necessary to limit the size of the project to two territories to ensure it remained manageable.

Although the thesis covers the history of the judiciary in Kenya and Tanganyika from the start of colonial rule until independence, the archival material in both territories does not cover each phase of colonial rule in equal depth. For example, there is relatively little material in English about Tanganyika's legal system and personnel during the German period, while there is considerably more data on Kenya's early judiciary between the late 1890s and the end of the First World War.[132] During the interwar period, however, Tanganyika was the focus of the implementation of indirect rule in East Africa. As a result, more records detailing administrative and judicial policy are extant from that territory. After the Second World War, the thesis places greater emphasis on Kenya. This is mainly because of the considerably larger size of its judiciary, the number of reported judgments, the greater number of archival records, and the far larger number of surviving advocates from the colonial period.

The bulk of the primary material used in this thesis is the result of archival research in various repositories in Britain and East Africa. Of the records held in the

[132] The first volume of the Tanganyika Revised Law Reports published in 1955 (TLR (R)), provides a useful overview of the German legal system in Tanganyika. This is discussed in greater detail in Chapter 4.

National Archives, those relating to the Colonial Legal Service were especially useful. Rhodes House in Oxford houses some material relating to a colonial judge who served in Tanganyika, Sir Mark Wilson. Much of the material in the Kenya National Archives is concerned with judicial policy and administration throughout the colonial period, although there are a number of references to individual judges' professional lives. The records in the Tanzania National Archives mainly covers judicial policy during the interwar period. In London, the Lincoln's Inn library was useful in accessing details about individual judges' education and experience.

The main problem with the archival work was accessing unreported High Court cases from the colonial period. These no longer exist in Dar es Salaam, either in the archives or in the High Court library. A large number of Court of Appeal for Eastern Africa cases are held in the archives in Nairobi, but they are uncatalogued and a full analysis of them would take a considerable amount of time. Cases relating to the Mau Mau rebellion are an exception as they are catalogued separately. As a consequence, reported cases have mostly been used in this study.

1.7.3 Judicial Choice

Two studies on the South African Appellate Division of the Supreme Court follow the same approach. *Judges at Work* by Hugh Corder analysed the decisions of the court over a 40-year period from 1910 to 1950, and Christopher Forsyth's *In Danger for their Talents* discussed the Court's decisions between 1950 and the early 1980s.[133] Both works attempt to prove how and why the judges exercised judicial choice. They begin by looking at the backgrounds of judges such as their social origins, qualifications and professional experience. They then select themes that were relevant to apartheid South Africa such as race relations, land issues, and treatment of detainees. As there is a vast body of Appellate Division case law on these subjects, they were able to analyse how individual judges tended to make decisions. They demonstrated that judicial choice is an entirely different issue from judicial independence. It is widely accepted that both the South African judiciary and the colonial judiciary in Kenya were not fully independent of the executive. Corder and

[133] Hugh Corder, *Judges at Work: The Role and Attitudes of the South African Appellate Judiciary, 1910-1950* (Cape Town: Juta, 1984); Christopher F. Forsyth, *In Danger for their Talents: A Study of the Appellate Division of the Supreme Court of South Africa* (Cape Town: Juta, 1985).

Forsyth, however, were able to identify cases in which judges were able to exercise judicial choice, which often resulted in judgments against the apartheid regime.

In addition to Corder and Forsyth's work, a number of studies have used reported cases as a principal research method. Examples include *The Politics of the Judiciary* by John Griffiths and *The Law Lords* by Alan Paterson, which begin with chapters on the social and professional backgrounds of judges and how they were appointed.[134] The chapters that follow are based exclusively on reported cases, which are discussed in themes. For example, Griffiths looked at cases dealing with personal rights, industrial relations rights and property rights. By examining these cases he was able to identify examples of judicial creativity, judicial policy and the political role of the judiciary.

1.7.4 Oral History

Chapter 7 draws principally on a series of interviews with advocates conducted in Nairobi and Mombasa during 2007 and 2008. Although over twenty advocates were interviewed in Kenya and Tanzania, only the oral evidence of thirteen of the Kenyan advocates who personally appeared before colonial judges in the Supreme Court of Kenya and the Court of Appeal for Eastern Africa has been used. This was to ensure their reminiscences of colonial judges was original testimony and not hearsay. Of the thirteen advocates, twelve were admitted to the Kenyan Bar prior to independence in December 1963, and one was enrolled soon after. The all-male group was made up of eight Asians, three Europeans and two Africans, which broadly reflects the composition of the Bar in the 1950s.

The first objective was to examine factors that made up the judges' identities. Exploring judicial identities exposed the inherent and obvious weakness of the entire interviewing process: the fact that the primary subjects of the interviews could not be interviewed themselves. The second objective was to ascertain what advocates thought about the role of the judiciary in the colonial state. The third objective was to gauge the performance of the judges. Advocates were generally willing to give their opinions on the competence of individual judges, but were often more hesitant when faced with political questions. Generally, it proved challenging to interview

[134] John A.G. Griffiths, *The Politics of the Judiciary* (London: Fontana Press, 1991); Alan Paterson, *The Law Lords* (London: Macmillan, 1982).

experienced lawyers, most of whom had been in practice for over half a century and had reached the top of their profession. It was also difficult to focus on each of the three research objectives in respect of every judge. They had all been trial lawyers and their testimony was frequently longwinded and strayed from the questions put to them. Nevertheless, this often resulted in valuable information being shared.[135] Many of the interviews were fairly short as the advocate in question had to attend to other matters, while some lasted over two hours. As the events that were the subject of the interviews had, in many cases, occurred over 50 years previously, many advocates failed to remember more than a few individuals, despite the fact that many had appeared before 30 or more judges prior to independence. In addition, some were newly qualified advocates in the late 1950s and did not have much opportunity to appear before all the judges, especially those in the Court of Appeal. They were, however, normally able to supplement their own experiences with those of their fellow advocates.

The interviews were semi-structured with the aim of creating a balance between a discussion of a number of pre-arranged questions and open dialogue. A typical interview began with questions about the advocate's legal education, which was usually in one of the Inns of Court in London. Questions followed about his early career in Kenya and his memories of specific judges. Some struggled to recall judges' names, but on production of a full list of all the judges who served in Kenya in the 1950s and 1960s assisted them in remembering individual judges. Care was taken to allow the informants sufficient room to construct a story, to express their feelings about events in the past and their consequences. This allowed informants to play an active role in deciding the agenda of the interview.[136] Despite the numerous problems associated with the interviewing process that have been outlined above, valuable historical evidence was collected about a number of judges of whom there is virtually no trace in the archival record.

Oral histories are of considerable historical value as they are cumulative in their effect: they illuminate personalities and give a sense of what it was like to live

---

[135] Alan Bryman notes that in qualitative interviews, 'rambling' or going off on tangents is often encouraged. Alan Bryman, *Social Research Methods* (Oxford: Oxford University Press, 2001), 313.
[136] Ronald J. Greele, 'On Using Oral History Collections: An Introduction', *Journal of American History* 74, no. 2 (1987), 570.

through certain historical moments.[137] At the same time, however, using oral history as a research methodology is highly problematic. For instance, the relation between any event described in an interview and the actual historical event has necessarily undergone a series of distortions. Although the perception of the actual event is stored in the memory of the informer, it is coloured by his personality. During the interview, part of this memory is released but the release itself is coloured by the exchanges between the interviewer and interviewee. In addition to a loss of information between the event itself and the interview, there is often an accretion to the event through the personality of the interviewee.[138]

Apart from methodological concerns relating to the informant, the researcher also needs to demonstrate that personal interest will not bias the study.[139] A crucial methodological issue in this study were the personal biases of both interviewer and interviewees. The latter comprised three different racial groups and it proved difficult to discount preconceived notions of what advocates' attitudes and prejudices were likely to be, based on historical accounts of settlers, Asians and Africans in post-war Kenya, as well as experiences in past interviews.[140]

The potential for bias in the interviewer's questions is frequently based on the research agenda. For example, an individual researcher usually approaches an interview with the objective of proving a thesis and may assume that anything contradicting that thesis is incorrect.[141] Importantly for a study of lawyers who belong to an exclusive profession, Margaret LeCompte has asserted that bias is primarily derived from two sources: personal experience and professional training.[142]

---

[137] Greele, 'On Using Oral History', 570.
[138] Jan Vansina, 'The Documentary Interview', *African Studies Bulletin* 8, no. 2 (1965), 9.
[139] Catherine Marshall and Gretchen B. Rossman, *Designing Qualitative Research* (London: Sage, 1995), 17.
[140] For example, David M. Anderson, *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire* (London: Phoenix, 2006); Berman, *Control and Crisis*; Caroline Elkins, *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya* (New York: Henry Holt and Company, 2005); John Lonsdale, 'Mau Maus of the Mind: Making Mau Mau and Remaking Kenya', *Journal of African History* 31, no. 3 (1990): 393-421; Carl G. Rosberg, and John Nottingham, *The Myth of "Mau Mau": Nationalism in Kenya* (New York: Praeger, 1966); David W. Throup, *Economic and Social Origins of Mau Mau* (London: James Currey, 1987).
[141] Donald A. Ritchie, *Doing Oral History*, Twayne's Oral History Series No. 75 (New York: Twayne Publishers, 1995), 96.
[142] Margaret D. LeCompte, 'Bias in the Biography: Bias and Subjectivity in Ethnographic Research', *Anthropology and Education Quarterly* 18 (1987), 44.

These concerns highlighted the importance of adopting a reflexive approach to the interviews conducted in Nairobi and Mombasa, a term used in research methodology to refer to a 'reflectiveness among researchers about the implications for the knowledge of the social world they generate of their methods, values, biases, decisions, and mere presence in the very situations they investigate'.[143] A reflexive approach in the interviews allows concepts to evolve through a process of re-examination and reflection.[144] More simply, reflexivity is the virtue of giving a full explanation of the methodological procedures used to generate a set of findings.[145] Reflexivity can also be regarded as the constant awareness, assessment, and reassessment by the researcher based on 'conscious intersubjectivity', which refers to dialogue between conscious minds.[146]

There is a fairly broad consensus about the problems involved in gathering reliable data from oral history interviews. In particular, how can the interviewer ask relevant, informed questions yet still provide an atmosphere that will not improperly influence the interviewee's responses? Related to this question is the larger issue of the objectivity or subjectivity of all historical data.[147] Another set of problems in oral history methodology is associated with the interviewee. These include the degree of trust in the person interviewing him, the reliability of his memory, his willingness to be unreserved and frank, and the informant's tendency to be overly nostalgic.[148] Despite these concerns, incorporating oral testimony is often the only means of giving voice to historical actors. In this regard William St Clair observed that

> …memory is itself a faulty and unstable narrative and…contemporary documents are to be preferred as evidence over the narratives in authors' own biographies. At the same time some of the most important events, or circumscribing limitations, of a life may leave few traces in the documentary record, not because they were secret or shameful, but because they were so universal or so ubiquitous as to be taken for granted.[149]

---

[143] Bryman, *Social Research Methods*, 507.
[144] Norman Blaikie, *Designing Social Research: The Logic of Anticipation* (Cambridge: Polity Press, 2000), 139.
[145] Clive Seale, *The Quality of Qualitative Research* (London: Sage, 1999), 162.
[146] Philip Carl Salzman, 'On Reflexivity', *American Anthropologist* 104, no. 3 (2002), 806.
[147] R. Kenneth Kirby, 'Phenomenology and the Problems of Oral History', *Oral History Review* 35, no. 1 (2008), 24.
[148] Ibid., 24-25.
[149] William St Clair, 'The Biographer as Archaeologist', in Peter France and William St Clair (eds.) *Mapping Lives: The Uses of Biography* (Oxford: Oxford University Press, 2004), 227.

1.7.5 Historical Sources

The study also highlights the importance of an awareness by historians of different types of sources and their relative veracity. While W.H. McDowell has asserted that archival sources, letters and diaries are generally regarded as having a higher status than oral testimony, he also noted that in some cases interviews are able to provide more valuable insights about a social climate than other forms of historical evidence.[150]

With reference to the use of autobiographies as a research method, John MacKenzie has argued that biographical lives can serve as useful case studies for 'addressing some of the historiographical fractures and neglect of imperial diversity.'[151] Further, as discussed in the chapter on two colonial judges on circuit, Ralph Austen recognised that however flawed and unrepresentative autobiographies may be, they at least express the voices of colonial actors who are silent in documentary evidence.[152] If the autobiographer published extensively it is essential to also examine their unpublished work. In a private autobiography, letters and diaries are very important. In addition, comments by relations, friends and acquaintances can also be useful. By contrast, according to Ludmilla Jordanova, the historian basing research on a public autobiography should draw on a different set of sources; these include data on education, institutions, networks and personal achievements.[153]

Chapter 6 focuses on the professional lives of two judges who served in Tanganyika during the interwar period. The first of these men, Gilchrist Alexander, left four memoirs detailing his life as a young barrister in London and his career as a magistrate and judge in Fiji and Tanganyika. Apart from some cases recorded in the *Tanganyika Law Reports*, these works constitute the only written evidence of his life. Prosopographical data on colonial judges in East Africa during the interwar period also provides information relating to Alexander's educational background and his professional careers prior to leaving for the Pacific. When measured against these

---

[150] W.H. McDowell, *Historical Research: A Guide* (London: Longman, 2002), 57.
[151] John MacKenzie, 'Foreword' in Andrew Mackillop and Steve Murdoch (eds.) *Military Governors and Imperial Frontiers c. 1600-1800: A Study of Scotland and Empires* (Boston, MA and Leiden: Brill, 2003), xxvii.
[152] Ralph A. Austen, 'Interpreters Self-Interpreted: The Autobiographies of Two Colonial Clerks', in Benjamin N. Lawrance, Emily Lynne Osborn and Richard L. Roberts (eds.) *Interpreters, Intermediaries and Clerks: African Employees in the Making of Colonial Africa* (Madison, WI: University of Wisconsin Press, 2006), 159.
[153] Ludmilla Jordanova, *History in Practice* (London: Arnold, 2000), 101.

kinds of factors, his career followed a fairly typical trajectory, which adds to the historical validity of his accounts. In addition, the few references to his contemporaries' activities and attitudes frequently correlate with his own.

1.7.6 Chapter Summary

The thesis is divided into four parts. Part I comprises two chapters that concentrate on the Colonial Service, in particular how lawyers were recruited and how judges' careers progressed. Part II consists of a single chapter that describes the court structures and laws in both territories. Part III comprises two chapters that focus on Tanganyika during the interwar period; the two chapters that make up Part IV examine judicial developments in post-war Kenya.

Chapter 2 outlines the structure of the Legal Service and the process whereby judges were recruited. It includes a discussion of how potential legal officers became solicitors and barristers, and how they secured legal employment. Chapter 3 is based on a prosopographical study. Through an analysis of data relating to subjects such as education, nationality, experience at the Bar and transfers within the Empire, the chapter provides a profile of the type of lawyers who applied to join the Legal Service, as well as the characteristics of legal officers who were promoted to judgeships.

Chapter 4 is a discussion of how justice was administered, the establishment of court hierarchies and how legal personnel were distributed within Kenya and Tanganyika. The origins and development of the court system is discussed in order to demonstrate policy changes over time. For example, before 1920 the departments were often badly organised and officers were only stationed in towns that had sizeable European populations. The interwar period saw the extensive development and expansion of the judicial departments, particularly through the establishment of circuit courts.

Chapter 5 focuses on ideological conflict between judges and administrative officers during the interwar period over the control of African courts. Although this occurred to some degree in Kenya, the focus of the dispute, which resulted in the appointment of a commission of inquiry by the Colonial Office, was in Tanganyika.

Chapter 6 offers a new vantage point from which to view Tanganyika's legal system by looking at the day-to-day experiences of colonial judges on circuit. A discussion of the imposition of law through the staging of circuit courts throughout the territory provides a view from 'inside' the colonial modernising project, and exposes its fissiparous nature. An account of judicial circuits reveals a particular kind of colonial encounter: where judges displayed their adjudicative power in different ways, and before diverse audiences. They travelled mostly by rail and steamboat, holding criminal and civil sessions for a few days before moving on to the next court. They were also anxious to maintain a sense of exclusivity in their dress and choice of accommodation, in order to separate themselves from Africans as well as members of the district administration.

Chapter 7 looks at Kenya's judges in the 1950s and early 1960s through the eyes of the trial lawyers who appeared before them. Its focus is the advocates' day-to-day court experiences, and their assessment of individual judges' attitudes, competence and roles. Their oral testimony contributes to the thesis by providing an understanding of the function of Kenya's superior courts and the characters and outlook of the judges who staffed them. Finally, Chapter 8 provides a general picture of judicial attitudes and choice through an analysis of reported cases, and concentrates on judicial decisions during the Mau Mau rebellion between 1952 and 1959.

CHAPTER TWO

SIGNING UP

2.1 Introduction

During the colonial period an image of the typical colonial officer developed in the popular imagination, especially among recruitment staff in the Colonial Office. It was generally one of a middle-to-upper class recruit, who was a graduate of a public school and either Oxford or Cambridge universities. In order to staff its colonies, the Colonial Office gradually developed policies that determined how its officers were recruited. The recruitment process for the Colonial Service was geared towards the needs of the Administrative Service, by far the largest branch. As a result, the overwhelming majority of recruits were graduates fresh out of university, who attended a colonial training course before being sent to the colonies as cadets.[1] As they were not members of any particular profession, prior working experience was seldom an issue for recruiters. Unlike the recruitment process for the Indian Civil Service, there was no competitive examination, and emphasis was placed on personal interviews by recruitment officials who stressed the importance of qualities such as character, leadership and initiative over academic ability. While recruitment policy for the Administrative Service was relatively straightforward, legal recruitment remained problematic throughout the colonial period. This was mainly because of the nature of the barristers' profession. Although many law students qualified as barristers each year, there were insufficient vacancies to provide employment for all of them. The remainder had no right of appearance in the courts and were forced to seek employment outside the profession. In addition, those who succeeded in building profitable practices earned far more than they would have received had they pursued a colonial career; this led to fears that second-rate barristers who were unable to make a living in Britain applied to serve in the colonies as legal officers. As a result, recruiters placed greater value on the length of post-qualification

[1] In 1909, the Colonial Office established a two-month (later increased to three) training course for administrative officers at Imperial College, London. The subjects included hygiene, criminal law and procedure, African languages and ethnology. Following the end of the First World War, year-long training courses began at Oxford and Cambridge. Anthony H.M. Kirk-Greene, *On Crown Service: A History of HM Colonial and Overseas Civil Services, 1837-1997* (London: Macmillan, 2000), 17, 27.

professional experience. The chapter explores to what extent the education and training process of the barristers' profession helped create the types of lawyers required by the Colonial Office. It also looks into the traditions and principles associated with the profession, as these contributed to the emergence of a distinct judicial identity in the colonies.

2.2 Recruitment

2.2.1 Historical Background

The term 'Colonial Service' was first mentioned in official papers a few months before Queen Victoria's accession in 1837.[2] It only became an important part of imperial administration, however, after Joseph Chamberlain became secretary of state for the colonies in 1895. Before this date, the Colonial Office was not considered an important government department, especially when compared with the highly regarded Indian Civil Service (ICS). Chamberlain's appointment coincided with the period when Britain finally established her rule in many parts of Africa, and he developed an ideological framework that sought to unify the imperial territories for commerce and defence. Chamberlain commissioned a survey on the Colonial Service by Lord Selborne, the parliamentary under-secretary of state, who reported that there were major structural problems as well as significant differences between the various colonies. A major reorganisation of the Colonial Service followed, which included an overhaul of recruitment procedures.[3]

2.2.2 The Colonial Service Stereotype

Anna Crozier has identified three characteristics that were shared by many administrative officers during the colonial period.[4] First is the image of a Colonial Service mainly staffed by middle-to-upper class recruits, who were mostly graduates of either Oxford or Cambridge universities. Attendance at Oxbridge, however, did not mean that the stereotypical officer was academically gifted, and the tendency was for colonial officers to be well-rounded individuals who actively participated in sport

---

[2] Charles Jeffries, *The Colonial Empire and its Civil Service* (Cambridge: Cambridge University Press, 1938), 3.
[3] Anna Crozier, *Practising Colonial Medicine: The Colonial Medical Service in British East Africa* (London and New York: I.B. Taurus, 2007), 3.
[4] Ibid., 102.

and extra-mural activities.[5] The second aspect of the popular image of a colonial officer was his adherence to traditional and conservative values based on a public school education, such as sportsmanship and good morals. Third, he distinguished himself from his university peers by his adventurous spirit and desire to travel overseas.[6] This stereotype was partly based on images projected by the officers of the (ICS), who were required to pass entrance examinations that were renowned for their severity. Since university scholarships were rare in the period before the Second World War, this often meant that successful recruits came from privileged families who were able to afford a classical education at Oxford (the preferred choice for men who aspired to join the ICS) or Cambridge.[7]

In addition to academic study, Oxford and Cambridge represented a state of mind and a way of life. Many students cherished the sheer pride and vanity of the universities, and graduates nostalgically looked back to a time of relaxed living in between strict public school life and a career. To Furse, it was the right place for the intellectual training of gentlemen. He looked down on vocational training and believed it was preferable for students to study classics under the direction of cultivated men.[8] An English classical education was a way of looking at life rather than training and 'was part of growing up, along with Public School discipline, cricket and the social whirl at Oxford'.[9]

The educational component of the Colonial Service stereotype is supported by Henrika Kuklick's study of administrative officers in the Gold Coast, which concluded that the typical colonial officer was educated at a public school and either Oxford or Cambridge.[10] Similarly, Bruce Berman's research on the Kenyan Colonial Service between 1919 and 1939 indicated that 90 per cent of those officials for whom relevant information was available attended public schools. In addition,

---

[5] Lennox A. Mills, 'Methods of Appointment and Training in the British and Dutch Colonial Civil Service', *American Political Science Review* 33 (1939), 472.
[6] Crozier, *Practising Colonial Medicine*, 102-103.
[7] Ibid., 104.
[8] Heussler, *Yesterday's Rulers*, 109.
[9] Ibid., 108-109.
[10] Henrika Kuklick, *The Administrative Bureaucrat: The Colonial Administration in the Gold Coast, 1920-1939* (Stanford, CA: Hoover Institution Press 1979), 27.

three quarters had attended either Oxford or Cambridge.[11] Of particular importance for this study is the fact that many of the British public's impressions of colonial life emanated from Kenya. This was mainly because its image in Britain stemmed from the activities of the territory's large settler population.[12]

2.2.3 Recruitment Procedures

Ralph Furse was highly influential in shaping recruitment policy over the course of his long career in the Colonial Office.[13] He was inspired to reorganise Colonial Service recruitment after observing the appointment procedures used by the Sudan Political Service (SPS).[14] The SPS was unique in that it fell under the control of the Foreign Office, which afforded it a greater degree of autonomy than the other overseas services. It was also particularly attractive to Oxbridge candidates, and officers on leave actively participated in the recruitment process.[15]

Furse developed a system whereby entry into the Colonial Service was based on a combination of the applicant's track record, academic and character references, and interviews by recruitment officers. The examination for entry into the Foreign, Home, and Indian Civil Services was not used One of the characteristics of the system he developed was the power of recruitment officials to reach decisions on their own. Particular qualities were thought necessary, without which candidates would not succeed. For each candidate called for interview, a file was created, containing application forms, letters from referees and interviewers' notes. Candidates provided information on the names of the schools and universities they had attended, including any athletic distinctions and leadership roles. In essence, the recruitment system relied on a combination of testimonial letters and personal interviews. The opinions and comments of well-known referees were of great value to recruiters, who did not have the benefit of examination grades to guide them. Ultimately, they relied on their own intuition. To Furse, the most important factors in recruiting officers

---

[11] Bruce Berman, *Administration and Politics in Colonial Kenya*, PhD dissertation, Yale University, 1973, 95 cited in Dane Kennedy, *Islands of White: Settler Society and Culture in Kenya and Southern Rhodesia, 1890-1939* (Durham, NC: Duke University Press, 1987), 73.
[12] Crozier, *Practising Colonial Medicine*, 104.
[13] Robert Heussler, *Yesterday's Rulers: The Making of the British Colonial Service* (Syracuse: Syracuse University Press, 1963), 14.
[14] Richard Symonds, *Oxford and Empire: the Last Lost Cause?* (London: Macmillan, 1986), 195.
[15] Ibid., 194.

were the public schools they had attended and whether or not they had an Oxbridge education.[16] He faced demands for a competitive exam for the Colonial Service, but he believed in the interviewing system and felt that an examination would lower the general standard of the service. In his view, strong character and sound common sense were of far greater value than a brilliant academic record.[17] Henrika Kuklick has claimed, however, that while the standards of recruitment remained constant for a remarkably long period, it was only in certain instances that Furse succeeded in effectuating the 'collective portrait' he painted of administrative officers.[18]

2.2.4 The Unified Service

At the turn of the twentieth century, the British government considered many of its overseas territories too small and widely scattered to support a colonial service. The civil service of each territory developed a unique character from the beginning. This meant that a truly unified service in the French sense, in which officials were transferred from colony to colony and between continents, was aimed at but never fully achieved.[19] It was acknowledged that the senior administrative posts of governor and colonial secretary formed a career in which able officers could be promoted from one colony to another.[20] Nevertheless, the official view was of a 'career in which the variety of problems involved and the tact required are infinite, and hence it could hardly be made into a regular profession, with a rigid method of admission and promotion'.[21]

It was not until after the First World War that recruitment became a priority for the Colonial Office.[22] Colonial governments increasingly required well-qualified and carefully selected officers from a range of professions, which the existing system could not provide.[23] This led to the setting up of the Warren Fisher Commission of 1929-1930 with the purpose of formulating a new structure for the Colonial Service,

---

[16] Symonds, *Oxford and Empire*, 18-22, 81.
[17] Alan Burns, *Colonial Civil Servant* (London: Allen & Unwin, 1949), 294.
[18] Kuklick, *Imperial Bureaucrat*, 20.
[19] Heussler, *Yesterday's Rulers*, 5.
[20] Abbott Lawrence Lowell, *Colonial Civil Service; the Selection and Training of Colonial Officials in England, Holland, and France* (London and New York: Macmillan, 1900), 74-76.
[21] Ibid., 76.
[22] Ralph Furse, *Aucuparius: Recollections of a Recruitment Officer* (London, 1962), 57.
[23] Charles Jeffries, *Whitehall and the Colonial Service: An Administrative Memoir, 1939-1956* (London: Athlone Press, 1972), 11.

which became known as the Unified Service in 1930. The rationale for setting up the Commission was twofold: to improve recruitment into the Colonial Service and to increase its efficiency. It was hoped that this would improve general standards and all colonies would benefit from the pooling of ideas and experience.[24]

The Colonial Service was formally founded in 1930 and the Colonial Legal Service was established three years later. The creation of the Legal Service formalised recruitment policy and created a list of scheduled legal posts for each territory across the Empire. The Colonial Office relied on the support of the Inns of Court, to shorten the time required for qualification as a barrister, and to attract the best candidates. Professional experience was often a contentious issue as legal officers, including judges in the colonies, maintained that four years of post-qualification experience was essential. Furse, however, was determined to speed up the qualification process and, in addition, allow legal officers without any professional experience to serve in the colonies. Another reason for the emphasis on legal qualifications and experience was the fact that English law was implemented throughout the Empire and legal officers were expected to transfer between a number of different territories during their careers.

Significantly, the first branch to be unified was the Administrative Service, in 1932.[25] The Legal Service followed in 1933, the Medical Service in 1934, agriculture in 1935 and education in 1937.[26] The boom years for Colonial Service recruitment were between 1925 and 1929, when an average of 400 men and women were recruited each year. The global economic depression following the collapse of Wall Street in 1929 affected Colonial Service recruitment. Governors reduced the number of posts in individual colonies, selected officers for retrenchment, and cut salaries and benefits. In particular, touring and mileage allowances were cut back, which reduced the ability of judges to travel on circuit.[27] Pre-1929 recruitment figures were not reached again throughout the 1930s. By 1936, there were just over 1,200 administrators Empire-wide, under 1000 army and police, and fewer than 200 judges and legal officers, all spread over nearly two million square miles and serving

[24] Charles Jeffries, *Partners for Progress: The Men and Women of the Colonial Service* (London: George G. Harrap and Co., 1949), 41-42.
[25] Kirk-Greene, *On Crown Service*, 32.
[26] Ibid., 35.
[27] Ibid., 24, 36.

approximately 43 million people. There was a further recruitment slump during the Second World War. This was partly because Malaya, Hong Kong and Singapore were lost to the Japanese and because many colonial officers were interned or killed in action.[28]

The most significant change resulting from the creation of the Unified Service was that a career in the colonies was not necessarily limited to one colony or regional group.[29] Ambitious officers were thus given the opportunity to serve in a number of different colonies in their rise to the top of their respective colonial professions.[30] Furse claimed that as the Colonial Service became better known, candidates were more likely to choose a colonial career in preference to more lucrative posts in the City because of the appeal of belonging to a *corps d'élite*; this was one of the reasons why he supported unification.[31] Prior to 1930, each of the services had a local character. In order to attract the best recruits, he wished to raise the status of the Colonial Service in the public imagination, comparable to that of the ICS. India was by far the largest territory in terms of population, but not in size if all the territories under the control of the Colonial Office were combined. In his view, a single unified service would make a greater impact, far more than the sum of around 50 separate administrations. In sum, he supported unification as it would make the Colonial Service

> …more flexible, enabling better use to be made of the wide variety of experience to be found among its officers and offering to them wider opportunities of promotion and of movement to fresh fields, of scope for novel experience, and of applying knowledge they already possessed to new problems and fresh opportunities.[32]

Importantly, the Unified Service was superimposed on the existing system whereby individual colonial governments remained the employers of individual officers. The Colonial Office's solution to this was to draw up a schedule of posts that required certain educational and professional qualifications.[33] In drawing up the schedules,

---

[28] Kirk-Greene, *On Crown Service*, 36-40.
[29] TNA: PRO CO 850/106/5, D.M. Kennedy, Acting Governor, Tanganyika to W. Ormsby-Gore, Secretary of State, 5 July 1937.
[30] Ibid.
[31] Furse, *Aucuparius*, 221.
[32] Ibid., 222.
[33] Jeffries, *Whitehall and the Colonial Service*, 12.

the Colonial Office intended that the posts would not be filled by local applicants of British descent. In cases where it was clear that a post would customarily be filled by a locally recruited officer, it was omitted from the schedule.[34] The reason for this was that in the colonies there was a distinction between those officers who had been recruited in Britain and those who were recruited locally. The former were part of an Empire-wide organisation whose members were liable to serve in other territories, while the latter spent their entire careers in a single colony.

Although locally recruited officers were not prohibited from applying for scheduled posts, the Colonial Office believed the whole character of the Unified Service would be changed if they were recruited on a large scale. As a consequence, they recommended that only officers from Britain were to be considered for scheduled posts, and it was extremely rare for locally recruited officers to be appointed.[35] A second distinguishing factor was that officers recruited in London were employed on conditions suitable to officers who did not ordinarily reside in the colony in which they served. In particular, their salaries and leave conditions were framed in light of the fact that their careers lay outside their home country.[36]

Before 1930, the definition of posts under the secretary of state's control was fixed with reference only to salary. After unification, this was widened to include the holders of scheduled posts within each branch of the Unified Service.[37] For example, scheduled posts in the Administrative Service included the positions of district commissioner, provincial commissioner and chief secretary. Holders of these posts would automatically be listed as members of a particular branch of the Unified Service on the date it came into existence, which was 1932 in the case of the Administrative Service.[38] The schedules provided for a career structure that covered the entire Empire, and officers were entitled to be considered for promotion to any posts that became available; they were also obliged to transfer between territories if requested to do so. The main purpose of unification was to increase recruitment by creating a 'corporate service' with standardised and improved conditions of

---

[34] TNA: PRO CO 850/106/5, D.M. Kennedy, Acting Governor, Tanganyika to W. Ormsby-Gore, Secretary of State, 5 July 1937.
[35] TNA: PRO CO 850/106/5, Colonial Office Circular, 5 May 1937.
[36] Ibid.
[37] Jeffries, *Whitehall and the Colonial Service*, 12.
[38] In certain circumstances it was possible for officers not holding such posts to be appointed by the secretary of state later on.

employment, salaries and pension arrangements.[39] By 1938, it is estimated that the number of colonial officers defined as members of one of the unified branches was approximately 7000, which included 1500 administrative officers, 600 members of the Medical Service, 400 police officers, 300 legal officers and 300 agriculturalists.[40] Their elite status is seen in the fact that fact that the total strength of the Colonial Service, including civil servants employed in the colonies, was approximately 200,000.[41]

2.3 Legal Recruitment

2.3.1 General Principles

In Britain, judges were directly appointed from the ranks of eminent members of the Bar, whereas colonial judges were appointed and promoted within a specific career structure.[42] It was therefore extremely rare for legal recruits to be directly appointed to the colonial Bench, and when appointing legal officers, the Colonial Office saw them only as potential judges. As a consequence, emphasis was placed on the length of professional experience gained in Britain, and during the interwar period, officers were expected to have completed at least four years at the Bar before being appointed to legal posts in the colonies. For instance, Sir Jacob Barth, chief justice of Kenya between 1920 and 1934, wrote that 'early practical knowledge and familiarity with the atmosphere of Courts of Justice at home must be of incalculable value when they attain to senior positions'.[43]

Time spent in the Colonial Service itself was not regarded as professional experience and the more time an officer had spent in practice as a barrister before joining the Legal Service, the higher the likelihood of him being promoted to a judgeship later on.[44] Recruitment officers especially looked for barristers who had chosen law as a vocation, who could be a source of inspiration to advocates in East

[39] Jeffries, *Whitehall and the Colonial Service*, 13.
[40] Ibid., 12.
[41] Ibid., 10.
[42] Chief justices were often appointed direct from the post of attorney-general. H.F. Morris and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972), 310.
[43] KNA AP 1/1693, Acting Registrar, Supreme Court, Nairobi, to Colonial Secretary, 9 November 1934.
[44] KNA AP 1/1693, P. Cunliffe-Lister, Secretary of State, Memorandum, 1 March 1933; M. Macdonald, Secretary of State, Circular, 29 July 1938; Attorney-General to Colonial Secretary, 6 November 1934.

Africa, most of whom had not practised outside the region, and who were unfamiliar with the traditions of the legal profession in Britain.[45] Officers who entered the Legal Service with professional experience in Britain were also rewarded with higher salaries. For instance, in 1938, for every year of professional experience gained between the age of 25 and their first appointment to the Legal Service, barristers were entitled to one increment in the colonial salary scale up to a maximum of five increments. The initial salary in Kenya for a magistrate or crown counsel was £600. Thus a practising barrister aged 26 would have received £630.[46]

2.3.2 The Colonial Legal Service

Following the creation of the Legal Service in 1933, a schedule of posts was drawn up for each territory, and existing holders of these posts were designated 'foundation members'.[47] The new regulations stipulated that officers holding non-scheduled junior legal posts were not eligible for appointment to one of the scheduled posts later on. This led to a flurry of correspondence between colonial governors and the Colonial Office, with requests that certain junior legal posts, such as those of registrar of titles and assistant law officer, be included in the new schedule.[48] In spite of their efforts, holders of many of these posts remained ineligible for promotion to the scheduled posts. However, holders of more important junior legal posts not included in the schedule, such as that of deputy registrar, were deemed to be eligible for promotion later on, provided they possessed the requisite qualifications.[49]

In Kenya, the government was anxious that qualifications for scheduled posts were not rigidly enforced in the case of resident magistrates, and that the filling of legal vacancies from the Administrative Service should be the rule rather than the exception.[50] In some colonies, administrative officers who had been called to the Bar wished to continue serving in a legal capacity, but chose not to join the Legal Service,

---

[45] KNA AP 1/1693, Acting Registrar to Colonial Secretary, 9 November 1934.
[46] Jeffries, *Colonial Empire*, 145.
[47] Jeffries, *Partners for Progress*, 45.
[48] TNA: PRO CO 850/40/4, Governor of Trinidad and Tobago to Under Secretary of State, 9 April 1934; Governor of Jamaica to P. Cunliffe-Lister, Secretary of State, 1 March 1934.
[49] TNA: PRO CO 850/40/4, P. Cunliffe-Lister, Secretary of State, to Governor, Fiji, 3 October 1934.
[50] TNA: PRO CO 850/40/4, P. Cunliffe-Lister, Secretary of State, to J. Byrne, Governor, Kenya, 3 October 1934.

as they were not prepared to sacrifice all chances of promotion in the Administrative Service by doing so.[51]

Although the judicial, legal, and registrar-general's departments remained separate throughout the colonial period, the Colonial Office classed all legal officers as being in the Legal Service and ranked them accordingly. In Kenya, there were ten scheduled posts, the senior-most being the chief justice, followed by the attorney-general, puisne judge[52] and solicitor-general. The registrar-general was fifth in importance followed by resident magistrate, crown counsel, registrar of the Supreme Court, assistant to the registrar-general, and the deputy registrar of the Supreme Court. Tanganyika had an additional three scheduled posts, the most important being the land officer who was ranked higher than a resident magistrate. He was assisted by two grades of assistant land officers. In addition, the Kenya-Uganda Railway was assigned its own legal adviser.[53]

The East African territories had a total of 36 Legal Service posts between them, which was an indication of their importance within the Empire during the interwar period. Some of the smaller territories, such as the Gambia and the Leeward Islands, were only assigned three posts. Others, such as the Somaliland Protectorate and Malta, were only assigned a single legal officer.[54] By the early 1950s, 35 territories were served by the Legal Service. These varied greatly in both size and population. For instance, Seychelles had a population of 35,000 and was served by a chief justice, a magistrate, an attorney-general and his assistant. By contrast, Nigeria had a population of 25,000,000 and the territory was served by a chief justice, 17 puisne judges, 40 magistrates, a solicitor-general, an attorney-general, three legal secretaries, four senior crown counsel and 24 crown counsel. Whatever the size or importance of the territory, however, the judicial powers of the judges were equal.[55]

---

[51] TNA: PRO CO 850/54/16, Officer Administering the Government of Hong Kong to M. Macdonald, Secretary of State, 8 August 1935.
[52] So-called as they were permanent judges who were inferior in rank to the chief justice.
[53] TNA: PRO CO 885/34/9 Miscellaneous No. 437: The Colonial Legal Service. Special Regulations by the Secretary of State for the Colonies with Schedule of Offices revised to 1 May 1939.
[54] Ibid.
[55] TNA: PRO CO 877/58/10, A. Russell, 'The Colonial Legal Service and the Administration of Justice in Colonial Territories', December 1952.

2.3.3 Selection Methods

Unlike most Colonial Service professions, there were a number of different ways of qualifying as a lawyer, and this often created problems for the Colonial Office. As discussed in Chapter 1, candidates who were called to the Bar after three years of academic study received the title of barrister, but they could not practice as fully qualified barristers until they had served a period of pupillage. These positions were often very difficult to secure, so many barristers were prohibited from practising in the courts. On the other hand, men training to be solicitors only received the qualification after they had worked in a law firm for two years. To complicate matters further, Scottish and Irish qualifications differed from those in England and Wales. As a consequence, the Colonial Office needed to consider a greater number of aspects when recruiting prospective legal candidates than it did for entrants to other branches of the Colonial Service.

The Personnel Division in the Colonial Office was formed in 1930, and was organised into an Appointments Department under Ralph Furse and a Colonial Service Department under Charles Jeffries.[56] Selection for legal posts were made from lists of 'noted' candidates.[57] The lists were divided into barristers and solicitors and were divided into three classes: 'sheep', 'frogs' and 'goats'. Sheep were the best candidates and were subdivided into 'alpha' and 'beta' grades, frogs were average and goats were poor. In the *Colonial Legal Service Recruitment Report*, published in 1934, the frogs and the goats were virtually written off. Of the barristers, there were 14 sheep, 11 frogs and 19 goats; among the solicitors there were nine sheep, 18 frogs and 18 goats.[58] Recruitment officials at the Colonial Office acknowledged that, as laymen, it was difficult to estimate the true worth of prospective candidates. On the basis of general merit and personal qualities, however, they judged that only four barristers and no solicitors had reached the standard of the best 50 candidates who had applied to join the Administrative Service. Of the nine solicitor sheep, it was

[56] Jeffries, *Whitehall and the Colonial Service*, 7.
[57] TNA: PRO CO 877/10/6, Minutes of a meeting between Messrs. H.G. Bushe, R. Furse and C. Jeffries, 11 December 1934.
[58] Ibid.

noted that five had previously applied and been rejected for administrative posts and the remaining four could never aspire to more than 'froggishness'.[59]

Table 2.1: Colonial Legal Appointments throughout the Empire, 1925-1933.

Year	1925	1926	1927	1928	1929	1930	1931	1932	1933
Barristers	5	2	8	4	3	6	3	7	5
Solicitors	2	-	8	7	3	4	-	-	1

In the early 1930s, legal candidates were first ranked according to their administrative merit. Strong 'all-round' records were prized above 'advocate-academic-intellectual' excellence. Others were turned down because they were 'not of pure European extraction'. Having brothers in the Colonial Service was considered an advantage. The Appointments Department described the difference between the barristers and solicitors who applied as 'brilliant' and 'worthy'. No matter how low the standard of barristers, they tended to inspire the recruitment officers more than the solicitors did.

Apart from professional qualifications and physical fitness for tropical service, Furse looked for attributes of character and temperament which were difficult to define on paper, but were of importance in deciding whether candidates would be successful under the conditions and environment in which legal officers worked.[60] Significantly, even though his stated policy was to improve the standard of qualifications on the 'personal' side, in the case of legal appointments, professional qualifications and competence remained far more important than academic excellence or sporting ability at university. Other factors taken into account were the lawyers' professional ability, extent of practice, and their general bearing in court.[61] By the 1950s, the age limit for legal officers was 40, although candidates over this age were sometimes considered. By contrast, prospective administrative officers needed to be under the age of 30.[62]

[59] TNA: PRO CO 877/10/6, Minutes of a meeting between Messrs. H.G. Bushe, R. Furse and C. Jeffries, 11 December 1934.
[60] TNA: PRO CO 877/10/6, R. Furse, Internal Memorandum, undated.
[61] TNA: PRO CO 877/10/6, R. Furse, Internal Memorandum, 12 December 1934.
[62] *Appointments in His Majesty's Colonial Service*, CSRI 1952 (London: HMSO, 1952).

2.4 The Inns of Court

Ralph Furse recognised that public advertisements for most branches of the Unified Service, such as the Education Service, were often ineffective, as a large majority of those who applied turned out to be unsuitable. In his view, the most successful recruitment method was direct and permanent contact with the relevant authorities in potential recruiting areas such as universities and professional associations.[63] As a result, the Appointments Department suggested in 1933 that contact with the Inns of Court be established in much the same way recruitment officials for the Administrative Service maintained links with the University Appointment Boards.[64]

When the Inns of Court were established in the thirteenth and fourteenth centuries, universities did not teach law. In addition, there were no Bar schools to provide legal training and the Inns performed these functions.[65] Towards the end of the nineteenth century, this function was taken away when the Bar Council, founded in 1884, began providing legal training to law students.[66] Importantly, the Inns are placed in close proximity to the Royal Courts of Justice, and their buildings bear a close resemblance to the Oxford and Cambridge colleges as well as English public schools. In addition, they added to colonial judges' sense of self-importance by providing an area of London, reserved for members of their profession, where they were able to spend time while on leave from the colonies.[67]

2.4.1 Qualifying as a Barrister

In addition to passing legal examinations, a student needed to join an Inn and complete twelve qualifying sessions before he or she could become a qualified barrister. These mostly took the form of dinners at one of the four Inns, although an introductory session and the call night itself counted as qualifying sessions.[68]
One of the aims of the dinners was to encourage students to take part in the life of the Inn. As a result, for a dinner to count as a qualifying session, students had to

---

[63] TNA: PRO CO 877/10/6, R. Furse, Internal Memorandum, undated.
[64] TNA: PRO CO 877/10/6, Minutes of a meeting of Messrs. H. G. Bushe, R. Furse and C. Jeffries, 11 December 1934
[65] Adam Kramer, *Bewigged and Bewildered? A Guide to Becoming a Barrister in England and Wales* (Oxford and Portland, OR: Hart Publishing, 2007), 14.
[66] Raymond Cocks, *Foundations of the Modern Bar* (London: Sweet and Maxwell, 1983), 219.
[67] Kramer. *Bewigged and Bewildered?*, 14.
[68] Ibid., 123.

attend an 'edifying' event that preceded or succeeded the dinner. These included moots[69], talks, debates, or music recitals; special gowns were worn and students were seated at long tables.[70] The ancient tradition of dining in a mess (a group of four students) helped to develop close professional relationships.[71] Following the completion of the prescribed numbers of dinners and examinations, students were then 'called to the Bar', a ceremonial granting of the status of barrister-at-law.[72]

2.4.2 Pupillage

Articled clerkship for solicitors has been compulsory since the seventeenth century. By contrast, pupillage, though almost universal, was not compulsory for practise in England and Wales until 1958.[73] Pupillage was the barristers' apprenticeship, which lasted a year and could be described as a year-long interview.[74] The primary aim of a pupil was to impress his master, a junior barrister, with the aim of being invited to become a tenant of the chambers. In the event that he failed to do so, it was possible to move to another set of chambers.[75] The pupil's tasks included watching his master in court, assisting him in general legal work, and drafting papers. In doing so, he acquired a groundwork of practical knowledge, and was usually allowed to take cases after six months.[76] Pupils were often assigned to draft papers in the 'pupil room' of a particular set of chambers, which were later checked and corrected by the master.[77] After a long period of practice, typically 15 to 20 years, barristers were nominated by the Bar Council to become Queen's Counsel. They were then entitled to wear a silk gown, which was regarded as the distinguishing badge of their status.[78]

2.4.3 The Traditions of the Bar

The Inns of Court attached great value to the opportunity given during the preliminary period of a barrister's training to dine in Hall, to make use of the

---

[69] A mock trial set up to examine a hypothetical legal case as an academic exercise.
[70] Kramer, *Bewigged and Bewildered?*, 124.
[71] Harold Morris, *The Barrister* (London: Geoffrey Bless, 1930), 19.
[72] Kramer, *Bewigged and Bewildered?*, 14.
[73] J.H.Baker, *An Introduction to English Legal History* (London: Butterworths, 2002), 172.
[74] Kramer, *Bewigged and Bewildered?*, 94.
[75] Ibid., 95.
[76] Charlotte Buckhaven, *Barrister By and Large* (Bath: Chivers Press, 1985), 20.
[77] Morris, *Barrister,* 28.
[78] J.H. Baker, *The Common Law Profession: Lawyers, Books and the Law* (London and Rio Grande, OH: Hambledon Press, 2000), 103.

excellent legal libraries and common rooms, and to frequent the nearby courts. All these activities afforded applicants the opportunity to 'become imbued with the traditions of professional and judicial conduct which gives distinction to British Justice'.[79]

The Bar Council believed the optimal base of legal knowledge was a combination of intellectual and practical understanding, some of which was explicit (legal education in Britain) and some implicit (legal expertise acquired from supervised practice during and after a period of pupillage). As much of this legal knowledge could only be absorbed through familiarisation with the barristers' profession, a long period of tutelage followed by a year-long pupillage was considered essential.[80] While the nature of the barristers' legal knowledge was the principal reason for the profession's 'aura of mystery', that impenetrability was also deliberately used as a means of gaining authority and status.[81] The 'legal expert' was defined as a man who knew so much that he could only communicate a small part of it.[82] This element of tacit knowledge within the colonial legal profession helps explain its efforts to achieve exclusive jurisdiction; it also partly accounts for its traditionalism. Africans, Asians and Europeans alike saw mystery in the tasks performed by colonial judges and lawyers, something that was clearly beyond the reach of the ordinary man.

2.4.4 The Quality of Recruits

For many young successful barristers, the idea of joining the Legal Service and becoming civil servants under the control of the Colonial Office was an extremely unattractive option. For less successful lawyers, however, a career in the Legal Service remained a sensible career choice as it offered a stable income, a pension and other benefits.[83] The Colonial Office faced difficulties specific to the recruitment of lawyers, given the requirement that applicants needed to have at least four years' experience at the Bar. Many barristers with this level of experience would have

---

[79] TNA: PRO CO 877/10/6, J.R. Atkinson, Minute, 1 March 1923.
[80] Harold L. Wilensky, 'The Professionalization of Everyone?', *American Journal of Sociology* 70 (1964), 149-150.
[81] Ibid.
[82] Ibid.
[83] TNA: PRO LCO/2/3242, M.D. Lyon, Chief Justice, Seychelles, to B. Nihill, President, Court of Appeal for Eastern Africa, 6 January 1951.

established themselves in private practice and the incentive to join the Legal Service diminished as their earnings increased. Charles Jeffries recognised the gravity of the situation stating that the Colonial Service '[did] not want the unsuccessful ones'.[84] Similarly, Gilchrist Alexander, who served as a judge in Tanganyika between 1920 and 1925, believed there would always be difficulties in persuading quality barristers to 'forsake the more lucrative ranks of the Bar for the dignity of the Bench.'[85] In an attempt to recruit the best barristers possible, Jeffries implemented a scheme that selected promising candidates at the outset of their professional careers, and gave them financial assistance while they gained practical experience'.[86]

2.4.5 The Quality of Training

In spite of Jeffries's concerns, the Appointments Committee tended to attach greater weight to experience in the Administrative Service rather than to experience at the Bar. Unfortunately, this often meant that seniority based on length of service in the Colonies often outweighed merit.[87] Prior to the Second World War, a significant number of appointments to the Legal Service were made from the ranks of administrative officers already serving in the colonies. Most had been called to the Bar or were qualified solicitors, but had no legal experience in Britain. Local advocates in the colonies were also allowed to apply to the Colonial Office in the same way as other candidates applied for the Legal Service, subject to the condition that they were qualified barristers, whether or not they had served pupillage in Britain.[88]

As the majority of administrative officers had not been called to the Bar, Furse negotiated with the Inns of Court to shorten the period of time required for qualification as a barrister. The reason for this was that candidates were normally required to keep 12 terms in London, each term lasting three months. This made it

---

[84] Jeffries, *Partners for Progress*, 141.
[85] Gilchrist Gibb Alexander, *Tanganyika Memories: A Judge in the Red Kanzu* (London and Glasgow: Blackie and Son, 1936), 20.
[86] Jeffries, *Partners for Progress*, 142.
[87] TNA: PRO LCO/2/3242, M.D. Lyon to B. Nihill, 6 January 1951.
[88] TNA: PRO CO 533/627, E. Barrett, Hon. Secretary of the Law Society of Kenya to Acting Colonial Secretary, Nairobi, 19 April 1926; E. Grigg to L.C.M.S. Amery, Secretary of State, 29 May 1926.

impossible for legal officers to obtain the qualification during one period of leave.[89] Eventually, the Inns of Court agreed that officers who had exercised magisterial functions in the colonies or had acted as counsel in prosecuting cases, were only required to keep four terms provided they dined six times during each term. In normal circumstances, applicants were required to attend two dinners a term, a total of 26 dinners over three years. By contrast, colonial officers were allowed to complete their attendance of the required 26 dinners in a year.[90]

The Inns of Court, however, attached great importance to tacit legal knowledge and were deeply concerned that the Colonial Office's policies would lower the standard by allowing colonial officers to qualify faster than British applicants. In particular, they were anxious to avoid the possible embarrassment in the colonies of a barrister, who had qualified in the normal way by serving 12 terms over a period of three years, appearing before a second rate barrister who had qualified in only a year, and who had been appointed as a magistrate or judge.[91]

On the other hand, many colonial governors felt that administrative officers' lack of professional experience was more than compensated by their local knowledge and by the fact that their superiors knew them and could attest to their performance as lay magistrates. Sir Alan Burns, who served as governor of British Honduras, Nigeria and the Gold Coast, stressed this last point, commenting that it was never certain that newly recruited lawyers from Britain would be a success or not.[92] Nothing was known of them except the records of their interviews and references. In addition, legal officers held senior positions in the colonial hierarchy, and it was difficult for colonial governments to remove incompetent ones once they had been appointed.[93] Burns personally knew many legal officers recruited in Britain who were very good but more who were not. In his view, a lawyer who joined the Legal Service after practising at the Bar may have had a personal reason for serving in the colonies, but there was also a chance that he had failed to make a success through his

---

[89] TNA: PRO CO 877/10/6, Minutes of a Meeting between Messrs. H.G. Bushe, RFurse, C. Jeffries, 11 December 1934.
[90] TNA: PRO CO 323/913/36259, J.R. Atkinson, Secretary to the Council of Legal Education, Report of the Council of Legal Education upon the Proposals for the Amendment of the Consolidated Regulations referred to the Council by Order of the Middle Temple dated 23 November, 1922; the Communications in support from the Colonial Office and the India Office, 1 March 1923.
[91] TNA: PRO CO 877/10/6, J.R. Atkinson, Minute, 1 March 1923.
[92] Alan Burns, *Colonial Civil Servant* (London: Allen and Unwin, 1949), 301.
[93] Burns, *Colonial Civil Servant*, 301.

own fault. If so, his legal knowledge was no greater than that of the 'briefless barrister' from the Administrative Service.[94] Gilchrist Alexander wrote that life at the Bar was a gamble. For those at the top there were huge rewards, while those at the bottom could hardly make a living wage.[95] He had spent as 'many years as he cared for' as a struggling barrister in county courts, High Court and parliamentary bar. His opportunity for a more stable professional career came when the government of Fiji sent a request to the Colonial Office for a practising barrister to fill the post of Chief Police Magistrate. They required someone with professional training who 'would be able to cope with the local lawyers, a body of men whom the laymen on the Bench at that time stood somewhat in awe'.[96] He didn't know the first thing about Fiji, and his first visit to the Colonial Office was to find out more about the territory. The interview was straightforward and he used it as an opportunity to obtain information on pay, pensions and similar matters.[97]

This problem was not unique to the British Empire, and there were complaints in the Netherlands that there were few men of 'sufficient capacity' for the highest courts in the Dutch East Indies.[98] The reality was that professional men found it more attractive to remain in Britain, as they received higher earnings than in the colonies. In response, the Colonial Office made improvements in pay and conditions; theseadjustments sometimes resulted in bad feeling between the Legal Service and other branches of the Colonial Service.[99]

2.5 Recruitment Schemes

Recruitment to the Legal Service lagged behind other branches of the Unified Service before the Second World War, and the highest priority was given to improving recruitment after 1945.[100] After the Second World War, the Colonial Office created 2,500 'higher-grade' posts in all branches of the Colonial Service. There was an overwhelming response for vacancies that did not require specific

---

[94] Burns, *Colonial Civil Servant*, 301.
[95] Alexander, *Tanganyika Memories*, 208.
[96] Alexander, *From the Middle Temple to the South Seas* (London: John Murray, 1927), 26.
[97] Ibid., 26-27.
[98] Lowell, *Colonial Civil Service*, 125.
[99] Arthur Creech Jones, 'The Colonial Service', in William A. Robson (ed.) *The Civil Service in Britain and France* (London: Hogarth Press, 1956), 86-87.
[100] TNA: PRO CO 877/31/1, C. Jeffries to A. Russell, 10 June 1947.

qualifications. There remained, however, a lack of qualified people for the professional positions, which included legal posts.[101] The rapid economic and social development of the territories, accelerated by the Colonial Development and Welfare Acts from 1940 onwards, resulted in the need for an increased influx of colonial officers, who could not, except in a small measure, be recruited from the local population..[102]

Another reason for the shortage of prospective legal recruits was increasing competition from various boards and corporations in London for newly-qualified barristers of the highest quality. The Colonial Office was therefore anxious to institute an effective recruitment strategy to attract these lawyers.[103] It decided to adopt three new policies to stimulate further recruitment. The first was the appointment of Sir Alison Russell, who had served as Tanganyika's chief justice between 1924 and 1929, as the Colonial Office's recruitment liaison officer to the Inns of Court.[104] The second was the introduction of a Legal Scholarship Scheme to assist suitable men in being called to the Bar, and to provide maintenance during their time in chambers as pupils. The third was the printing of a Legal Service recruitment pamphlet.[105]

2.5.1 The Appointment of Sir Alison Russell

Permanent legal staff in the Colonial Office were periodically assisted by judges who had previously served in the colonies, and were able to use their wide experience and expertise when providing advice. One of the earliest examples was Albert Ehrhardt KC, a judge in Kenya between 1910 and 1914, who acted in an advisory capacity in the Colonial Office. Later advisers included Sir Alison Russell and Sir Sidney Abrahams, both of whom had served as chief justice of Tanganyika.[106]

Recruitment initiatives tried out by Russell included placing advertisements for the Legal Service in the libraries of the Inns of Court. He was anxious to recruit young King's Counsel, but was often unsuccessful as they were generally reluctant to

---

[101] Jeffries, *Partners for Progress*, 81.
[102] Jeffries, *Whitehall and the Colonial Service*, 3.
[103] TNA: PRO CO 877/31/1, R. Furse, Minute, 16 April 1948.
[104] Alison Russell reported directly to Ralph Furse.
[105] TNA: PRO CO 877/31/1, A.H. Dutton to J. Sheridan, Chief Justice, Kenya, 13 February 1947.
[106] Jeffries, *Partners for Progress*, 170.

give up their lucrative practices.[107] Russell also arranged for recruitment lectures to be held at the universities of Oxford, Cambridge, Queen's, London, Glasgow and Edinburgh, and made efforts to establish contact with the Faculty of Advocates in Edinburgh, and the Inn of Court of Northern Ireland.[108]

In 1947, a Joint Committee consisting of representatives from the four Inns of Court was set up to assist the Colonial Office in recruiting barristers.[109] By the end of that year, however, Russell admitted that there were insufficient suitable candidates to fill the available vacancies. While he maintained that unsuitable candidates would not be appointed, applicants who were 'reasonably well qualified' were guaranteed appointment as legal officers.[110] Russell even went so far as to advise the Joint Committee not to go to the trouble of interviewing candidates, and investigating and reporting on their credentials, until such time as there was a list of applicants that exceeded the number of vacancies.[111]

Soon after it began recommending candidates for appointments in the Legal Service, the Committee requested information on how the barristers they had recommended were 'shaping', to assist them in recommending candidates in the future.[112] Accordingly, the Appointments Department began providing it with reports on the progress of those barristers who had been recommended by the Committee, who were serving in the colonies as legal officers.[113]

2.5.2 The Legal Scholarship Scheme

Following the end of the Second World War, the Colonial Office introduced a colonial legal probationership scheme that paid the most promising candidates' fees for being called to the Bar, as well as maintenance during their time in chambers.[114] It targeted three types of lawyers. First, the scheme aimed to attract the best barrister and solicitor candidates and assist them in gaining the requisite professional

---

[107] TNA: PRO CO 877/31/1, Interview between Alison Russell and the Under Secretary of Lincoln's Inn, 4 September 1946.
[108] TNA: PRO CO 877/31/1, A. Russell, Minute, 5 September 1946; A. Russell to Major Hutchinson, 12 September 1946.
[109] TNA: PRO CO 877/31/1, A.H. Dutton to George Graham Paul, Chief Justice, Tanganyika, 15 May 1947.
[110] TNA: PRO CO 877/31/1, A. Russell to Under Secretary, Lincoln's Inn, 7 November 1947
[111] Ibid.
[112] TNA: PRO CO 850/96/5, Colonial Office, Internal Correspondence, 11 January 1938.
[113] TNA: PRO CO 850/96/5, Colonial Office, Internal Correspondence, 1 February 1938.
[114] TNA: PRO CO 877/31/1, A.H. Dutton to E. Jackson, 25 October 1946.

experience. Second, the programme was designed to assist barristers and solicitors in other branches of the Colonial Service who wished to be transferred to the Legal Service. Third, it was designed to help solicitors in the Legal Service to become barristers. This would allow crown counsel to be promoted to the posts of solicitor-general and attorney-general, and resident magistrates to judgeships.[115]

The great majority of applicants for the scheme were English, but prospective entrants from Scotland and Ireland were also encouraged to apply. There were differences between the legal qualifications of England and Scotland. For instance, at Scottish universities, the LLB degree could only be taken after the completion of an MA, which meant that legal education in Scotland was longer than in England. Furthermore, the scheme would only pay for the cost of call to the English Bar even though the cost of call in Edinburgh was higher than in London.[116]

There were general complaints of discrimination against Scots. For example, a law professor at the University of Aberdeen claimed the system was 'rigged in favour of English lawyers from the start'.[117] In addition, the scheme paid for professional fees and expenses in London such as rental for chambers, but did not make provision for this in Scotland.[118] These kinds of issues gave rise to ill feeling among Scottish lawyers, especially as they only received a maintenance allowance of £240, £60 lower than their English counterparts.[119]

2.5.3 The Colonial Legal Service Pamphlet

In 1946, Russell and Abrahams preparing a pamphlet designed to attract the best lawyers to the Legal Service. It included photographs of judges and courts around the Empire, 'all with the design of shewing that there was a high tradition, great scope and dignity, and a fine career in the Service'.[120] Letters were sent to chief justices in the colonies requesting photographs that emphasised the impressive and more distinguished aspects of the Legal Service. These included pictures of judges in

---

[115] *Appointments in HM Colonial Service*.
[116] TNA: PRO CO 877/38/1, H.J. Butchart, Secretary, Marischal College, University of Aberdeen, to G.G. Shute, Colonial Office, 20 June 1949; TNA: PRO CO 877/38/1 G.G. Shute to H.J. Butchart, 30 June 1949.
[117] TNA: PRO CO 877/38/1, T.M. Taylor, Professor of Law, University of Aberdeen, to J. Wheatley, Lord Advocate, Edinburgh, 22 July 1949.
[118] Ibid.
[119] *Appointments in HM Colonial Service*, 126-127.
[120] TNA: PRO CO 877/31/1, A.Russell to R. Furse, Minute, 4 March 1948.

full regalia, impressive court buildings and judges' residences. The intention was to publish an attractive pamphlet to replace the existing stereotyped memorandum, with a view to attracting first-class barristers in greater numbers.[121] The pamphlet's aim was to demonstrate that a career in the Legal Service offered not only the attractions of work overseas but, more importantly, positions of equal responsibility and dignity to those held by the legal profession at home.[122] Photographs were chosen with the intention of providing prospective applicants with a visual summation of the Legal Service's activities throughout the Empire. There was an emphasis on Africa, especially East Africa, with less importance being placed on the Far East. The majority of photographs were of Kenya, which was the first choice of most applicants, and included scenes of court proceedings and judges outside the court building in Nairobi (Figures 3 and 4). The Colonial Office also included a photograph of an impressive attorney-general's house from Lagos (Figure 6).[123] In fact, the occupier of the house complained about the appalling lack of accommodation in Lagos, and feared that the pamphlet would be grossly misleading to prospective applicants.[124] Similarly, some officials in the Colonial Office warned recruiters that less emphasis should be placed on the attractive lifestyle offered by service overseas, as candidates were likely to be more concerned about mundane factors, such as salaries, living quarters, and pensions.[125] A photograph of the chief justice of Kenya, Sir Joseph Sheridan, inspecting a guard of honour in Nairobi was chosen for the front cover (Figure 5).[126] A picture of the Kenya Highlands was inserted to balance one of the Penang Hills in Malaya (Figures 7 and 8). There were few openings in the West Indies and therefore only one photograph, of Kingston in Jamaica, was included.

Despite Russell's efforts, however, the quality of legal recruits declined after 1945. Administrative officers often criticised legal personnel as being inferior in quality, which was felt to be one of the causes of the 'bad blood that is so regrettably

---

[121] TNA: PRO CO 877/31/1, A. Russell to the Governors of Kenya, Tanganyika and Uganda, 18 September 1946.
[122] TNA: PRO CO 877/31/1, A.H. Dutton to Newbolt, 29 March 1947.
[123] TNA: PRO CO 877/31/1, A. Russell, Minute, undated.
[124] TNA: PRO CO 877/31/1, A. Riderbaulgh, Attorney-General, Lagos to K. Roberts-Wray, 22 September 1948.
[125] TNA: PRO CO 877/31/1, Sir C. Jeffries to A. Russell, 10 June 1947.
[126] TNA: PRO CO 877/31/1, A.H. Dutton to R. Terrell, 15 October 1948.

often found in colonies between the Executive on the one side and…the Judiciary on the other'.[127] For instance, legal officers in Cyprus referred to administrative officers as belonging to the 'Brahmin caste' who attacked them for their incompetence. The chief justice, Sir Edward Jackson, complained that the nature of judges' work exposed them to adverse criticism. Addressing the administration, he stated that 'you can hide your duds and you do. We can't hide ours; we do our work in public'.[128]

2.6 Recruitment in the 1950s

In 1952, the Colonial Office confirmed that at least three years' professional experience was required for appintment to the Legal Service, although this period could be reduced in 'suitable cases'[129] In reality, however, this requirement was often ignored and the rigourous interviewing process of the 1930s became a thing of the past. For instance, Ralph Lownie, a deputy registrar who worked in the Supreme Court of Kenya in the 1950s, remembered attending a Colonial Service recruitment presentation at the University of Edinburgh. At the lecture, recruitment officials emphasised that a first class degree was the minimum academic requirement for joining the Legal Service. As he had little chance of achieving this, he decided not to consider the option of a colonial legal career. He later qualified as a solicitor and went to Kenya with the intention of starting a legal practice, but instead decided to apply for a Legal Service post at the Supreme Court in Nairobi. There were hardly any formalities, and once his credentials had been confirmed by the Colonial Office, he was appointed as a deputy registrar. Although he never had any dealings with recruitment officials in England, his record stated that he was recruited in London. This was presumably to distinguish him from locally-recruited lawyers with regard to pensions and other benefits.[130] A second deputy registrar, Paul Heim, grew up in Nairobi and went on to read law in England. After being called to the Bar, he returned directly to Kenya and joined the Legal Service.[131] Similarly, Charles Njonjo, Kenya's only African to join the Legal Service, was called to the Bar in

---

[127] TNA: PRO CO 877/31/1, E. Jackson, Chief Justice, Cyprus to A.H. Dutton, 8 October 1946.
[128] TNA: PRO CO 877/31/1, E. Jackson to A.H. Dutton, 12 November 1946.
[129] *Appointments in HM Colonial Service*, 52.
[130] Telephone Interview, Ralph Lownie, former Deputy Registrar of the Supreme Court of Kenya, 19 October 2007.
[131] Interview, Paul Heim, former Deputy Registrar of the Supreme Court of Kenya, Castle Cary, Somerset, 27 August 2008.

England. He decided to join the Legal Service as a crown counsel and made an application to the Colonial Office. At the interview he was simply asked whether he wanted to join the judicial or legal departments on his return to Kenya. From the perspective of the recruitment officials, the main purpose of the short interview was simply to meet the applicant, who was assured of a post once he had certified that he had been called to the Bar.[132]

2.7 Conclusion

Clearly, the Colonial Office felt a need for 'proper judges' in the colonies, and aimed to create a 'different sell' in order to appeal to the best young British barristers. In spite of recruitment officials' best efforts, however, legal recruitment remained a problem for the Colonial Office throughout the colonial period. Unlike the situation in other branches of the Colonial Service, the unique nature of the barristers' profession shaped legal recruitment policy. As more barristers qualified each year than could be accommodated by the profession, scores of lawyers were compelled to look for employment elsewhere. The Colonial Office was anxious not to recruit men who had no practical experience and began insisting that prospective applicants had practised at the Bar for at least three years. The problem with this policy, however, was that many of those barristers who had been in practice for three years chose to remain in the profession, as their financial prospects were far higher than those offered by a legal career in the colonies. As a result, the legal recruitment process could not guarantee that the best men were recruited, and there were numerous cases of lawyers joining the Legal Service who would never have made successful careers as barristers in Britain. Colonial judges' professional identites were largely shaped during their time as student barristers in the Inns of Court, and most never lost their affinity with their particular Inn, whether or not they had practised as barristers prior to leaving for the colonies. This characteristic arguably became the most important aspect of their colonial judicial identity and shaped their attitudes, both towards the laws they administered and towards the varied peoples with whom they came into contact.

[132] Interview, Charles Njonjo, Nairobi, 2 May 2008.

CHAPTER THREE

JUDICIAL ATTRIBUTES

'Only when we are intimately acquainted with who the imperial administrators [were]…can we proceed to a soundly-based study of imperialism.'[1]

3.1 Introduction

Anthony Kirk-Greene's observation about the officers of the Sudan Political Service, the most elite group of administrators in British colonial Africa, is equally applicable to colonial officers in other departments, in particular the judges of Kenya and Tanganyika. This chapter argues that a distinct judicial identity developed in Kenya and Tanganyika, and demonstrates how this situated colonial judges within the two territories, the Colonial Service, and the Empire. It is divided into two sections. The first part examines judges' nationalities and the educational institutions they attended. The second part is an analysis of institutional practices within the Legal Service; the most important of these were policies relating to promotions. The Legal Service was part of an Empire-wide system, and almost every judge in this study had served elsewhere in the Empire, either before or after their time in Kenya or Tanganyika. Consequently, rankings within the Empire were very important to them, particularly those who aimed to become chief justices of prestigious territories such as Kenya.

Judges often shared the same social backgrounds as the senior administrators. They were normally educated at public schools, followed by Oxbridge, and were eligible for the best clubs in London and entries in *Who's Who*.[2] They were a tiny elite who moved from colony to colony and were proud of their independence. In Tanganyika, their social position within the Empire was far higher than that of their German counterparts before the First World War.[3] Governors were the only group of men within the Colonial Service to have comparable transfer rates, far outnumbering their lower-ranking colleagues in the Administrative Service, who

---

[1] Anthony H.M. Kirk-Greene, 'The Sudan Political Service: A Profile in the Sociology of Imperialism', *International Journal of African Historical Studies* 15 (1982), 21-48.
[2] *Who's Who* and *Who was Who* are annual publications contained concise biographical entries of noteworthy and influential individuals in all walks of life, in the United Kingdom and worldwide.
[3] Lewis Gann and Peter Duignan, *The Rulers of British Africa, 1870-1914* (London: Croom Helm, 1978), 237.

typically spent their entire careers in a single territory. A study of transfers moves towards the argument that this constant movement of judges had a material effect on how justice was administered in the two East African territories: as many judges only had three or four years in a single territory, they had less opportunity to acquaint themselves with local conditions and customs than their administrative counterparts.

3.2 The Colonial Judiciary in Kenya and Tanganyika

Lawrence Stone has defined the term 'prosopography' as 'the common background characteristics of a group of actors in history by means of a collective study of their lives'.[4] Prosopography as a research tool has traditionally been the preserve of ancient historians. Stone, however, was an early modern historian who used the methodology of the social sciences to study history. He suggested the term 'prosopography' should continue to be used by ancient historians, 'multiple career-line analysis' should be used by social scientists, while modern historians should refer to this methodological tool as 'collective biography'.[5] In collective biography, a tightly defined group must be defined at the start of the study; this allows the historian to ask a set of uniform questions. These typically include questions about birth and death, marriage and family, social origins and source of personal wealth, occupation, and experience of office. Information about the subjects of the study are then set side by side and compared in order for the historian to examine whether or not there are internal correlations, or correlations with other groups.

While biographical details for some judges, particularly the chief justices and judges of appeal, are comprehensive, there is scarcely a trace in the historical record for other members of the colonial Bench. Many judges submitted their *curricula vitae* for publication in *Who's Who*, but these entries sometimes contain details that do not accord with other records, the most important of which are the *Staff Lists* published annually by the governments of the two territories. This is partly because entries were

---

[4] Lawrence Stone, 'Prosopography', *Daedalus* 100 (1971), 46-79; one of his best known books is *The Crisis of the Aristocracy, 1558-1641* (Oxford: Clarendon Press, 1965), in which he made a detailed quantitative study of data relating to the economic activities of the English aristocracy. On the basis on his research, he concluded that there was a major economic crisis for the nobility in the sixteenth and seventeenth centuries.

[5] Ibid.

submitted by the judges themselves, often in retirement, who were sometimes unsure of the exact dates that marked their colonial careers. Other biographical sources include the admission registers of the Inns of Court held in the library of Lincoln's Inn, London; the *Law List*, which indicates whether barristers practised following their call to the Bar; the *Law Times* and the *Law Journal*, which contain obituaries of some of the better-known judges; and the testimony of advocates in Kenya who practised during the colonial period. The question of whether judges practised as barristers before embarking on their colonial careers is important as it indicates the difference between stated Colonial Office policy and practice in the colonies. For example, Colonial Office policy stated that only those recruits with three or four years' practice at the Bar would be accepted (this figure fluctuated between 1933 and 1963). In practice, however, a large number of judges had less than the stipulated minimum period of professional experience, or in some cases, none at all.

3.2.1 Nationalities

Approximately 64 per cent of the judges who served in Kenya and Tanganyika during the colonial period were English. By contrast, 13 per cent were Irish while only eight per cent were Scottish. There were reports of some English barristers who argued that as the law administered in the colonies was based on English law, for which Scottish qualifications were inappropriate. The Lord Advocate in Edinburgh maintained, however, that there was no reason why Scottish qualifications should not be included in the Legal Scholarship Scheme. In his view, Scottish lawyers' education and training did not prevent them from applying English rather than Scots law in the colonies.[6]

.

[6] TNA: PRO CO 877/38/1, J. Wheatley to A. Creech Jones, 27 July 1949.

Table 3.1: Nationalities

	EACA	Kenya Chief Justices	Kenya Judges	Tanganyika Chief Justices	Tanganyika Judges	Total
England	8	3	19	5	14	49
Ireland	1	1	5	1	2	10
Scotland	-	1	-	1	4	6
Wales	1	-	-	1	-	2
New Zealand	2	-	1	-	1	4
South Africa	-	-	1	-	2	3
Seychelles	-	-	1	-	-	1
Kenya	-	-	1	-	-	1
No Data	-	-	-	-	1	1
TOTAL	12	5	28	8	24	77

3.2.2 Education

3.2.2.1 Background

During the formative years of British rule, recruitment into the administration of the East Africa Protectorate was largely local. On the whole, recruits came from the middle and lower classes in Britain; of the approximately 200 men who joined the administration between 1895 and 1914, 12 were military officers, five were doctors, five were lawyers, and four were civil servants. Nine were the sons of businessmen, seven were the sons of gentlemen, three the sons of peers and one was the son of a secretary of state for the colonies.[7]

The Foreign Office and the government in Mombasa considered the lack of a sufficiently high social background and education to be the cause of colonial officers' incompetence, especially when dealing with fellow Europeans.[8] As a result, shortly after assuming responsibility over the East Africa Protectorate in 1905, the Colonial Office ended local recruitment for administrators and sent all future recruits directly from Britain. By 1907, the qualifications for an administrative post had been raised: candidates were required to either have a university degree, a military commission, professional legal qualifications or a certain number of marks in the Civil Service examination. In 1910, Governor Percy Girouard wrote to the Colonial Office that 'the time is past when we recruit our staff from so-called pioneers and cowpunchers'.[9] What was to become the Kenyan Administration soon became increasingly

[7] T.H.R. Cashmore, *Studies in District Administration in the East African Protectorate, 1895-1918*, PhD thesis, University of Cambridge, 1965, cited in Bruce J. Berman, *Control and Crisis in Colonial Kenya: The Dialectic of Domination* (London: James Currey, 1990), 99.
[8] Ibid.
[9] TNA: PRO CO/533/74/22078, Girouard to Seely, 14 June 1910, cited in ibid.

homogenous, especially with regard to educational background: in the intake of 1911-1912, six of the eight new recruits were Oxbridge graduates.[10]

As discussed in Chapter 2, applicants to the Colonial Service were selected on the basis of personal references and interviews. This allowed Ralph Furse to assess the factors of background, breeding and manner he considered essential for service in the colonies. Emphasis was placed on modest intellectual achievement, athleticism and a belief in the idea of British rule and the ideals of imperialism.[11] Furse's success in recruiting this kind of officer is reflected in the social backgrounds of Kenya's administrative officers.[12] In comparison with the Home Civil Service, the Kenya administration showed a higher proportion of men who attended public schools, about an equal number of Oxbridge graduates, and a lower proportion of graduates of state schools or universities outside Oxford and Cambridge.[13]

The large numbers of Oxbridge graduates within the Administrative Service partly resulted in a divide between it and the specialist departments, whose officers generally drawn from a wider range of educational and social backgrounds. Beneath the Administrative Service, the other government departments were arranged in a hierarchy of social status and prestige. The upper levels of this hierarchy were occupied by departments whose personnel had similar educational and social backgrounds to administrative officers. These included the legal, agricultural and medical departments, as well as the audit service. There were a number of university graduates in the education department, but they had attended a wider range of universities. With regard to the police, many of its officers had been to public schools but few had been to Oxford or Cambridge. At the bottom of the hierarchy were departments such as public works; customs; post and telegraphs; and the railways, in which few officers had attended either public schools or university.

3.2.2.2 Schools

During the nineteenth century, the English education system broadly reflected the stratification of society. It comprised three levels: 'elementary schools for the working

[10] Berman, *Control and Crisis*, 100.
[11] Ralph Furse, *Aucuparius: Recollections of a Recruiting Officer* (London, 1962), 55.
[12] Berman, *Control and Crisis*, 100.
[13] Ibid., 102.

class, secondary for the middle class and private public schools for the ruling class'.[14] With the development of public school system in the late nineteenth century, secondary schools ceased to be regarded as institutions that mainly educated the children of the middle classes. Nevertheless, they continued to be associated with the professions and retained a certain degree of social prestige.[15] The education system was reformed with the introduction of the Education Act, 1944, which increased the minimum age of schooling to 15. In addition, fees for secondary education were abolished and a tripartite system of grammar, technical and modern schools was introduced. Entrance to these schools was determined on the basis of a written test, with the most academically able being allocated places in grammar schools.[16]

A number of studies have established a close association between the public school system and British imperialism. For example, J.A. Mangan has suggested the existence of a causal nexus between the public school ethos with its anti-intellectual athleticism and imperialism.[17] According to Rupert Wilkinson the role of the public schools was predominantly political. Behind the aim of 'character-building' lay a political motive that was founded in the traditions of the English gentry.[18] Although he drew parallels between the values of public schoolboys and those of the British government, he did not imply that one caused the other, but that both were equal reflections of the ruling classes.[19]

The collective biographical analysis relating to education begins with the types of schools judges attended. Although 77 judges served in Kenya and Tanganyika between 1897 and 1963, data relating to their schooling is only available for 59 of them. They attended over 30 different schools in England, Scotland,

---

[14] Stephen J. Ball, *The Education Debate* (Bristol: Policy Press, 2008), 61.
[15] Olive Banks, *Parity and Prestige in English Secondary Education: A Study in Educational Sociology* (London: Routledge and Kegan Paul, 1955), 3-5.
[16] John Coldron, Ben Willis and Claire Wolstenholme, 'Selection by Attainment and Aptitude in English Secondary Schools', *British Journal of Educational Studies* 57, no. 3 (2009), 246.
[17] J.A. Mangan, 'Introduction: Imperialism, History and Education', in J.A. Mangan (ed.) *'Benefits Bestowed': Education and British Imperialism* (Manchester: Manchester University Press, 1988), 6; J.A. Mangan, 'Imitating their Betters and Disassociating from their Inferiors: Grammar Schools and the Games Ethic in the Late Nineteenth and Early Twentieth Centuries', *Proceedings of the Annual Conference, History of Education Society of Great Britain*, December 1982, 1-45 and J.A. Mangan, 'Grammar Schools and the Games Ethic in the Victorian and Edwardian Eras', *Albion* 15 (1983), 313-335, cited in John M. MacKenzie, 'Introduction', in John MacKenzie (ed.) *Imperialism and Popular Culture* (Manchester: Manchester University Press, 1986), 11.
[18] Rupert Wilkinson, *The Prefects: British Leadership and the Public School Tradition: a Comparative Study in the Making of Rulers* (London and New York: Oxford University Press, 1964), viii.
[19] Ibid., x.

Ireland (including what was to become Northern Ireland in 1921), Wales, Barbados, New Zealand, Seychelles, Kenya and South Africa.

Table 3.2: Schools

	EACA	Kenya Chief Justices	Kenya Judges	Tanganyika Chief Justices	Tanganyika Judges	Total
Clarendon Schools	2	1	4	2	2	11
Public/Independent	5	2	11	3	6	27
State	2	-	2	2	3	9
Colonial Schools	3	-	5	-	4	12
No Data	-	2	6	1	9	18
TOTAL	12	5	28	8	24	77

The Clarendon Commission was set up to investigate the internal affairs of nine schools between 1861 and 1864, and these have since been widely regarded as the most prestigious public schools in England.[20] The group comprises Charterhouse, Eton, Harrow, Merchant Taylors', Rugby, St Paul's, Shrewsbury, Westminster and Winchester.[21] By way of comparison, Kirk-Greene has produced a collective biography of the governors of British colonial Africa between c. 1870 and 1964, a group of approximately 200 men.[22] He was able to find education data for 144 governors, of which 21 had attended Clarendon' schools (Charterhouse, Eton, Harrow, Rugby, St Paul's, Shrewsbury and Winchester), a figure of approximately 15 per cent. Significantly, virtually the same percentage of judges went to one of the Clarendon schools (Charterhouse, Harrow, Rugby, St Paul's and Winchester).

Kirk-Greene also compiled a longer list of 21 elite schools, which included Clifton, Marlborough, Felsted and Cheltenham. 33 per cent of judges attended one of these schools while 60 per cent of governors did. A smaller number went to independent and religious schools, six were educated in the colonies and 20 per cent attended state schools, a far higher proportion than the governors. Of the four who attended religious schools, two Irish Protestants attended St Columba's College in Dublin, Ireland's most prestigious school that continues to be run by the Church of

[20] There has never been consensus among scholars on a precise and universally accepted definition of the public school. The definition used in this study is the one adopted by John Wakeford: the school's headmaster must be a member of the Headmasters' Conference, and at least a third (and at least 200) of the pupils must be boarders. Independent schools are fee-paying schools that are not primarily boarding and which were generally established after 1900. John Wakeford, *The Cloistered Élite: A Sociological Analysis of the English Public Boarding School* (London: Macmillan 1969), 10.
[21] Anthony H.M. Kirk-Greene, 'Scholastic and Scholarly Achievement in Britain's Imperial Civil Services: The Case of the African Governors', *Oxford Review of Education* 7 (1981), 11-22.
[22] Ibid.

Ireland. The other two judges were Irish Catholics and they attended Stonyhurst College in Lancashire, one of England's leading Catholic boarding schools, which is included in John Wakeford's definitive list of 82 elite public schools.[23]

3.2.2.3 Tertiary Education

Table 3.3: Undergraduate Degrees

	EACA	Kenya Chief Justices	Tanganyika Chief Justices	Kenya Judges	Tanganyika Judges	Total
Oxford BA/MA	3	2	2	7	9	23
Cambridge BA/MA	6	1	3	3	4	17
Trinity College Dublin BA/MA		1	-	4	2	7
Royal University of Ireland BA		-	-	1	-	1
London BA/LLB		-	-	2		2
St Andrews MA		-	1	-		1
Glasgow MA		-	-	-	1	1
Aberdeen MA		-	-	-	1	1
Wales BA		-	1	-	-	1
Auckland BA/LLB	2	-	-	1	1	4
Natal BA		-	-	1	-	1
No Data/Degree	1	1	1	9	6	18
Total	12	5	8	28	24	77

In common with the Administrative Service, Oxford and Cambridge were the preferred choices for undergraduates and 40 out of 59 judges in the survey were Oxbridge graduates, a figure of 68 per cent. As expected, nine out of 11 judges of appeal and 8 out of 11 of Kenya and Tanganyika's chief justices attended either Oxford or Cambridge. The figure for puisne judges in Tanganyika was 72 per cent, while only 56 per cent of Kenya's puisne judges went to Oxbridge. Five of Trinity College Dublin's graduates served in Kenya. Only three judges attended Scottish universities and none graduated from Edinburgh.

[23] Wakeford, *The Cloistered Élite*, 213-214.

Table 3.4: Postgraduate Degrees

	EACA	Kenya Chief Justices	Tanganyika Chief Justices	Kenya Judges	Tanganyika Judges	Total
Oxford BCL/BLitt/LLB	1	-	1	-		2
Cambridge LLB	2	-	2	-	1	5
Trinity College Dublin LLB	-	-	-	2	1	3
Edinburgh LLB	-	-	1	-	1	2
Auckland LLM	-	-	-	1		1
Natal LLB			-	1		1
No Postgraduate degree	9	4	1	20	18	52
No Data	-	1	3	4	3	11
Total	12	5	8	28	24	77

The table indicates that of the 66 judges for whom information was available, only 13 possessed postgraduate degrees. It was relatively rare in any jurisdiction for judges to have postgraduate qualifications, and they generally had little bearing on future promotions. The figures confirm that the chief criterion for colonial appointments and future promotions was professional experience at the Bar.[24]

[24] Anna Crozier, *The Colonial Medical Officer and Colonial Identity: Kenya, Uganda and Tanzania before World War Two*, University College London, PhD thesis, 2005, 274.

3.2.2.4 Taking Silk[25]

Only one judge in the study had been appointed a King's Counsel prior to joining the Legal Service: Sir Ambrose Webb had been called to the Bar in the King's Inns in Dublin and practised as a barrister between 1909 and 1921. This long period of professional experience was acknowledged by the Colonial Office, and his first posting was to the prestigious office of President of the District Court in Palestine.[26]

Table 3.5 King's/Queen's Counsel

Territories	Judges
Aden	1
Fiji	2
Gold Coast	1
Ireland	1
Jamaica	2
Kenya	2
Malaya	2
Nigeria	1
Seychelles	1
Singapore	1
Uganda	1
Total	15

Most colonial judges were not appointed King's Counsel in any territory, especially those who had been promoted from the magistracy. Strictly speaking, a KC or QC of one colony lost the title on transfer, but in practice he was allowed to keep it.[27] Some chief justices, such as Sir Kenneth O'Connor in Kenya, encouraged the practice as he wished to know which judges had served as law officers and whether or not they had taken silk.[28] Within the Empire, the honour of being appointed a KC or QC in Britain carried more weight than the equivalent honour given in the colonies.[29]

[25] This is the colloquial term within the legal fraternity for the honour of being appointed a King's Counsel or Queen's Counsel.
[26] *Who was Who*.
[27] KNA AP/1/1880, Colonial Office, Legal Division, Memorandum, 16 October 1954.
[28] KNA AP/1/1880, Sir Kenneth O'Connor to Sir Barclay Nihill, Dar es Salaam, 10 January 1955.
[29] Interview, I.T. Inamdar, Nairobi, 22 April 2008.

3.3 Rankings

3.3.1 Chief Justices

A colonial chief justice's position has been described by Charles Jeffries as a high and independent office of state 'surrounded with the traditional dignity of the law'.[30] Accordingly, court sessions were opened with due ceremony and mounted guards were inspected by the chief justice in the robes of his office.[31] Ostensibly, like their British counterparts, colonial judges were independent of the executive, both groups drawing their authority individually from the monarch. Judges were specially protected in their office, and could only be removed for proved misconduct by special proceedings involving the Privy Council. They retired at the age of 62, unless the secretary of state or the colonies ordered otherwise.[32]

Responsibility for the administration of justice was divided between the legal and judicial departments. As a consequence, the Legal Service was divided into judicial and legal branches, both of which were avenues for officers to be eventually appointed as judges. Seven core grades of officer made up the judicial and legal personnel during the colonial period: the chief justice, puisne judge, resident magistrate, registrar, attorney-general, solicitor-general and crown counsel. In most branches of the Unified Service such as the Medical Service, officers who were promoted to the higher ranks performed mainly administrative tasks. By contrast, promotion to high office in either the judicial or legal departments entailed a greatly increased amount of both administrative and legal duties.[33] Legal officers were subject to compulsory retirement, and were theoretically not permitted to serve after completion of 20 years' service in East Africa, or after reaching the age of 50. The Kenyan government, however, often continued employing officers who had exceeded either or both of these restrictions.[34]

The pre-eminence of the administration of justice was recognised by the fact that the chief justice was ranked as the second-most important official in the colony after the governor. In addition, most chief justices were later rewarded with

---

[30] Charles Jeffries, *Partners for Progress: The Men and Women of the Colonial Service* (London: George G. Harrap and Co., 19490, 141.
[31] Ibid.
[32] Ibid.
[33] TNA: PRO CO 533/397/6, Governor, Kenya to S. Passfield, 6 May 1930.
[34] Ibid.

knighthoods.[35] The chief justice ranked second in the 'table of precedency' immediately after the governor, as he represented the sovereign in his or her capacity as the 'Fountain of Justice'.[36] Some chief justices had long periods of local experience, often far longer than senior administrators. This was particularly the case in Kenya, which had 11 governors between 1905 and 1946, but only three chief justices. Sir Robert Hamilton, principal judge and then chief justice of the East African Protectorate between 1905 and 1918, saw four governors in office. Sir Jacob Barth served in Africa for 32 years, including 14 as chief justice (1920-1934). Sir Joseph Sheridan served for 38 years in East Africa, the longest of any colonial legal officer, and was chief justice in Tanganyika between 1929 and 1934, and in Kenya between1934 and 1946. William Morris Carter was chief justice of Uganda (1912 - 1920) and of Tanganyika (1920-1924). Such lengthy periods of service added to the authority with which the judges spoke, as well as the seriousness with which their views were considered by the administration.[37]

3.3.2 Puisne Judges

If a territory had more than two judges, puisne judges were ranked in order of seniority and the most senior was normally appointed as acting chief justice when the chief justice went on leave. For example, in Kenya, there were seven judges (including the chief justice) in 1930; six were stationed in Nairobi and one in Mombasa. The chief justice's salary was second only to the governor and was set at £2,400. The first, second and third ranked puisne judges were each paid £1,450, the fourth and fifth ranked were each paid £920; the sixth ranked judge received only £840, £40 less than the senior-most resident magistrate.[38] Kenya had five magistrates with salaries ranging from £720 to £880, who were stationed in the five largest towns across the country: Nairobi, Eldoret, Nakuru, Kisumu and Mombasa. By 1937, the judiciary had shrunk to four judges with none being stationed at Mombasa. In the same year, Kenya's magistracy was increased to seven: two were

[35] TNA: PRO CO 877/58/10, A. Russell, *The Colonial Legal Service and the Administration of Justice in Colonial Territories*, December 1952.
[36] Lewis Gann and Peter Duignan, *The Rulers of British Africa, 1870-1914* (London: Croom Helm, 1978), 238.
[37] H.F. Morris, and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972), 309.
[38] *Kenya Staff Lists* (Nairobi: Government Press).

posted to Mombasa, two to Nairobi, and the remainder to Nakuru, Kisumu and Eldoret. In the same year, Tanganyika's judiciary consisted of five judges, all based in Dar es Salaam, and seven resident magistrates, two of whom were posted to Dar es Salaam, and the remainder to Mwanza, Tanga and Arusha. As if to emphasise Kenya's higher status as a colony, Tanganyika's judges were slightly less well-paid: the chief justice received £2,200 and the remaining four judges were paid £1,400 each.[39]

3.4 Transfers

Legal officers normally achieved promotion by moving to other parts of the Empire and, as a result, were required to apply various legal codes with which they were unaccustomed.[40] However, despite the presence of French, Roman-Dutch, Muslim and customary law, the general principles of English law were applied throughout the Empire and the official policy of the Colonial Office was that a practical knowledge of English law was of far greater importance than a knowledge of local conditions. This was one of the reasons why members of the Legal Service were subject to more transfers than officers of other branches of the Colonial Service.[41]

Officers of the Colonial Service staffed those parts of the Empire that lay outside the self-governing dominions, India and the Sudan.[42] The system administered by the Colonial Office was not one of uniformity but rather of variety. There were 36 different and separate governments, each administratively, financially and legislatively self-contained. Each had its own administrative service, legal service, medical service and other departments with their own pay scales and pension systems.[43] The total area run by the Colonial Office was 2,325,398 miles, 46 times the size of England and more than double the size of India.[44]

The territories for which the Colonial Office was responsible were classed into five geographical groups. The first was the West Indies and the Atlantic possessions; the second consisted of the Mediterranean and the Near East; the third

---

[39] *Tanganyika Staff Lists* (Dar es Salaam: Government Press).
[40] Anton Bertram, *The Colonial Service* (Cambridge: Cambridge University Press, 1930), 152.
[41] Charles Jeffries, *The Colonial Empire and its Civil Service* (Cambridge: Cambridge University Press, 1938), 143.
[42] Bertram, *Colonial Service*, 1.
[43] Ibid., 2-3.
[44] Ibid., 9.

was the Pacific Island possessions; the fourth was the Far East; and the fifth was Africa.[45] The West Indies consisted of Barbados; Jamaica; Trinidad; the Windward and Leeward islands; and the mainland possessions of British Guiana and British Honduras, a total of ten different territories. Britain had five possessions in the Mediterranean and Middle East, namely Gibraltar, Cyprus, Palestine, Transjordan, and Iraq. The Far East included the Seychelles; Mauritius; British Malaya, which was made up of a cluster of territories that included the Straits Settlements and the Federated Malay States; Hong Kong; and Ceylon, which was described as 'the most beautiful country in the Colonial Empire and still its proudest possession', as well as the 'premier colony'.[46] The Pacific Island possessions included Fiji, the Solomon Islands, and New Hebrides.[47] Of these, Fiji was the most important.[48]

The Colonial Office divided Africa into four regions: the High Commission territories of Basutoland, Bechuanaland, and Swaziland; West Africa; East Africa; and Central Africa (Nyasaland and Northern Rhodesia).[49] The Colonial Service was primarily an African service and secondarily a Far East Asian service. Of the African territories, Nigeria, the Gold Coast, Kenya, Uganda, Tanganyika and Northern Rhodesia were the most prestigious; Ceylon and British Malaya were the most highly regarded in Asia.[50] The Colonial Empire was decentralised to a greater degree than the other European empires, and Britain did not follow a policy of assimilation as practiced by the French and Portuguese. British policy was often determined by a combination of local circumstances and the power of the Colonial Office; this meant that the civil services of the various territories developed particular characteristics.[51]

There were a high number of transfers, both internally between the legal and judicial departments, and between colonies. The proportion of senior to junior posts was high when compared with opportunities for promotion in other branches of the Colonial Service.[52] Transfers of administrative officers to the Legal Service and vice

---

[45] Bertram, *Colonial Service*, 5.
[46] Ibid., 7; Charles Jeffries, *Whitehall and the Colonial Service: An Administrative Memoir, 1939-1956* (London: Athlone Press, 1938), 41.
[47] Robert Heussler, *Yesterday's Rulers: The Making of the British Colonial Service* (Syracuse, NY: Syracuse University Press, 1963), 3.
[48] Bertram, *Colonial Service*, 7-8.
[49] Ibid., 9.
[50] Heussler, *Yesterday's Rulers*, 3.
[51] Colonial Office. Miscellaneous No. 117: *Legal Appointments*, 51.
[52] Jeffries, *Partners for Progress*, 142.

versa were infrequent but not unusual. For instance, several administrative officers became attorneys-general and chief justices, and senior legal officers were sometimes appointed to high administrative posts such as lieutenant governorships[53] In the Administrative Service, senior officers were eligible for transfer and promotion to another colony when no higher post was available to them locally. This, however, occurred often enough to jeopardise continuity, especially in respect of the smaller colonies.[54] It often meant that able officers were transferred to other territories whether or not their colonies could spare them. Robert Huessler has described this as a 'crisis system' of postings that left the lesser colonies perpetually understaffed.[55] Arthur Creech Jones, the secretary of state for the colonies between 1946 and 1950, expressed the paradox in these terms:

> [a]s to offers of transfer for service in another territory, junior officers feel that the knowledge and experience they gain should be utilized as far as possible in the territory to which they are assigned. Transfers should not occur except for special reasons and not before a reasonable time has been completed in a particular post. On the other hand, the official excuse for transfers is that while they occasionally lead to some lack of continuity in service, with results that militate against efficiency, this fact is far outweighed by the wider experience which the policy of interchangeability enables officers to bring to their subsequent tasks. But too frequently the public interest is sacrificed when experience and qualification are transferred from districts they know and where they are known by the people, to districts where they have to become familiar with the language the people and their customs.[56]

With regard to unity within the Colonial Service, separate pay scales and retirement schemes prevented unification on a truly imperial level. France had successfully achieved this, but Britain's commitment to colonial autochthony kept administrative services separate, throughout the interwar period and beyond. Arguably, the only real unity that existed within the Colonial Service was the common class and educational background of the officers.[57]

In practice, there was a large degree of transfer on promotion since the number of senior posts in most territories was small; in addition, the chances of being

---

[53] Jeffries, *Partners for Progress*, 116.
[54] Walter Russell Crocker, *Nigeria: A Critique of British Colonial Administration* (London: Allen and Unwin, 1936), 111, 239-240, 259.
[55] Heussler, *Yesterday's Rulers*, 52.
[56] Arthur Creech Jones, 'The Colonial Service', in William A. Robson (ed.) *The Civil Service in Britain and France* (London: Hogarth Press, 1956), 94.
[57] Heussler, *Yesterday's Rulers*, 53.

transferred and promoted were high in a service where 'general professional experience was more important than local knowledge, and where complete detachment from local politics and controversies [was] desirable'.[58] In recommending officers for promotion, the secretary of state relied on legal advisers in the Colonial Office to have a comprehensive and intimate knowledge of the personalities, qualifications, experience, and merits of applicants.[59] Legal advisers in turn relied on the advice of governors who drew on the knowledge of chief justices. In cases where chief justices had no personal knowledge of candidates they were expected to obtain as much information as possible from their fellow judges.[60] In cases where administrative officers applied for magisterial posts, chief justices generally adopted the Colonial Office's policy of avoiding appointing lay magistrates who would be ineligible for further promotion. The deciding factor was not whether an officer could immediately perform the duties of a magistrate or not, but rather his aptitude for legal work and his willingness to confine himself to the legal sphere. These skills were essential if he was to assume higher responsibilities later on.[61]

3.5 Promotions

3.5.1 Background

There was a greater movement of officers within the Legal Service than in any of the other branches of the Unified Service, which created increased opportunities for promotion for the most able and qualified men. In addition, the ratio of senior to junior posts was high. As a result, there was a constant flow of promotions from junior to senior posts. Promotion to judgeships remained relatively difficult as fewer openings arose; one of the reasons for this was that incumbents were permitted to serve until the age of 62.[62] The normal path to becoming a judge was appointment as a resident magistrate, followed by promotion to senior resident magistrate. Occasionally, administrative officers were appointed to legal positions. For instance, Sir Mark Wilson, who served as a puisne judge in Tanganyika between 1936 and 1948, was posted to Tanganyika as a cadet officer in 1924. His aptitude for legal

[58] Jeffries, *Colonial Office*, 172.
[59] Ibid.
[60] KNA AP/1/1660, F.C. Gamble to J. Sheridan, 24 February 1936.
[61] KNA AP/1/1660, C.A.G. Lane to J. Sheridan, 17 April 1936.
[62] Jeffries, *Colonial Office*, 145.

work was evident in the fact that he had excelled in law at Trinity College, Dublin and in his Bar examinations. In addition, he received praise from the judges who revised some of the cases he had heard in his capacity as a district magistrate.[63] As a consequence, after serving a short time in the territory, he was transferred to Uganda as a resident magistrate

3.5.2 The Appointments Committee

Recommendations for the appointments of legal officers as judges were made by a committee in London, which consisted of the secretary of state, the legal advisers in the Colonial Office and the heads of various administrative departments. The committee's powers were wide ranging, among them the power to refuse promotion for existing judges. Some judges felt that the legal status of the committee was questionable as it included only one trained lawyer. One suggestion was to create a smaller committee consisting of the legal adviser, a representative of the lord chancellor's department and a retired colonial judge. The system, however, remained unchanged throughout the colonial period. It was standard practice that judges were reported on by governors to the Colonial Office, even though it was felt that they were often not in a position to report on judges' abilities, industry or their relationship with the Bar.[64] Presidents of the permanent Court of Appeal for Eastern Africa, established in 1950, generally exercised a lot of influence with regard to the appointment of appellate judges and discussed their thoughts with governors before reports were sent to the Colonial Office.[65]

3.5.3 Relative Seniority of Officers

Once in the colonies, disputes often arose between legal officers as to their seniority within the Legal Service. The general Colonial Service regulations simply provided that seniority was based on the date of arrival in a particular colony. On the other hand, the more complicated Legal Service special regulations stipulated that the relative seniority of scheduled offices varied in different colonies. For example, in

[63] Reportedly, he stated that he would have liked to revise the opinions of the judges who had overturned his own decisions. Telephone interview, Anthony Wilson, 28 April 2010.
[64] TNA: PRO LCO/2/3242, M.D. Lyon to B. Nihill, 6 January 1951.
[65] TNA: PRO LCO/2/3242, T.I.K. Lloyd, Colonial Office, to A. Cohen, Governor, Uganda, 16 July 1952.

Kenya, Northern Rhodesia and the Gold Coast, magistrates were senior in rank to crown counsel, while the opposite applied in Nigeria. In the years immediately following the establishment of the Legal Service, there were a number of disputes over which set of regulations applied. Some were farcical such as a case in the Gold Coast where two officers, each with eight years' experience at the Bar in England, were appointed as crown counsel in the Gold Coast. One had no colonial experience and arrived directly from London. The other came from Kenya where he had served as a resident magistrate for four years, but his ship reached the Gold Coast about a month after the first officer had arrived from London. In spite of the fact that he was a confirmed legal officer of four years' standing on a higher salary than his colleague, the Colonial Office decided to invoke the Colonial Service regulations rather than those of the Legal Service. Accordingly, the newly-recruited officer was ranked as being senior to the more experienced one.[66]

Under the special regulations, officers did not lose seniority on transfer, and the posts of crown counsel and magistrate were later regarded as being interchangeable and constituting a single grade in the Legal Service. This was to ensure that magistrates or crown counsel would not lose their relative seniority if they decided to change posts, as the Colonial Office encouraged officers to have experience in both fields.[67] The intention was to treat the Legal Service as 'a whole and not in watertight compartments', both in respect of transfers within and between colonies.[68]

In Kenya, it was often a case of available vacancies and the personal preference of a candidate that determined whether or not he would be appointed as a crown counsel or a magistrate.[69] Although magistrates and crown counsel were regarded as being equal in rank, the Colonial Office intended that magistrates would eventually become judges, and crown counsel would become attorneys-general. In

[66] TNA: PRO CO 850/54/18, J.C. Howard, Attorney-General, Gold Coast, to Colonial Secretary, Accra, 2 November 1932; T.A. Brown and G.L. Howe, Crown Counsel, Gold Coast, to Attorney-General, 27 October 1934; A. Hodson, Governor, Gold Coast, to P. Cunliffe-Lister, 24 November 1934; P. Cunliffe-Lister to A. Hodson, 18 January 1935.
[67] TNA: PRO CO 850/54/18, Internal Correspondence, Colonial Office, 10 December 1935.
[68] TNA: PRO 850/54/17, Internal Correspondence, Colonial Office, 21 December 1934.
[69] TNA: PRO 850/54/17, J.E.W. Flood, Internal Correspondence, 27 December 1934

the case of acting appointments, crown counsel usually acted as solicitors-general.[70] These appointments were at the discretion of the governor, who had the power to appoint officers who were junior in rank to both magistrates and crown counsel if he believed they were the officers best qualified to fill the acting positions.[71]

3.5.4 Promotion of Judges

When vacancies for new judges arose, the governor of the colony concerned, on the advice of the chief justice, would report to the secretary of state on whether there were any suitable officers in the territory concerned.[72] If it was decided that there weren't, the Colonial Office selected a suitable candidate from some other part of the Empire.[73] Colonial judges were officially appointed upon the issue of Letters Patent, a legal instrument issued by the Crown granting them the right to assume judicial office. The date of the Letters Patent determined individual judges' relative superiority. As a consequence, whenever two judges were appointed at the same time, the Letters Patent were issued on different dates in order to ensure that the judge who was intended to be the senior should have his seniority confirmed without doubt.[74]

3.5.5 Promotion of Solicitors

At the end of the Second World War, the Colonial Office experienced difficulty in finding suitable candidates for a large number of legal appointments in East Africa.[75] In addition, colonial governments feared a large exodus of legal officers due for release from the armed forces. Many of the new applicants were solicitors and as a result, Colonial Office was forced to change its policy with regard to lawyers who had not been called to the Bar. It eventually proposed that successful solicitors be given financial assistance to be called to the Bar as the qualification was a virtual necessity

---

[70] TNA: PRO CO 850/189/4, Colonial Office to W. Harragin, Attorney-General, Kenya, 25 May 1943.
[71] TNA: PRO CO 850/189/4, Colonial Office, Internal Correspondence, East African Department, 12 April 1943.
[72] TNA: PRO CO 691/170, M. Young, Governor, Tanganyika to M. Macdonald, 5 July 1939.
[73] KNA AP/1/1773, Proceedings in His Majesty's Supreme Court of Kenya on the Occasion of the Swearing-In of His Honour Mr Justice James Joseph Hayden, 10 July 1937.
[74] TNA: PRO CO 850/54/18, Notes of a meeting between Messrs. G. Tomlinson, H. G. Bushe, C. Jeffries and A.B. Acheson, Colonial Office, 15 January 1936.
[75] TNA: PRO CO 877/23/2, R.L.M. James, Internal Memorandum, Colonial Office, September 1945.

if officers wanted to 'aim for the top' and be appointed to the colonial Bench.[76] Although the office of crown counsel was normally reserved for barristers, concessions were made for colonial solicitors who had court experience. Solicitors, however, remained barred from the posts of solicitor-general and attorney-general, especially because the latter was the leader of the local Bar.[77]

3.5.6 Promotion of Governors

It was almost unheard of for a governor to be appointed under the age of forty. Even well-known governors such as Sir Donald Cameron in Tanganyika, Sir Alan Burns in Nigeria, and Sir Philip Mitchell in Kenya were in their late forties and early fifties on their appointments. Like judges, their official functions 'comprised the essence and reality of being a colonial governor'.[78] Governors and judges shared many attributes such as attending similar types of schools and universities, as well as certain ethical norms expressed in phrases such as 'playing the game', 'gentleman's agreement', and 'team spirit'.[79] They were overwhelmingly from the professional and middle classes and were all-rounders rather than specialists; this was clearly seen in the fact that half of the governors during the interwar period and three quarters in the post-war period had served in the Administrative Service.[80] Governors were appointed for a single five-year term, although this could be extended for two years.[81] In some cases, governors were granted two extensions, the final one lasting a year.[82]

Most governors served in a single territory; outstanding governors served in two or more. Sometimes officers accepted a particular minor governorship or chief secretaryship in order to become governor of a larger territory later on. Some officers were even willing to take a cut in salary and privileges in order to serve in lowly-ranked territories such as St Lucia and Bermuda, as they believed they were

---

[76] TNA: PRO CO 877/23/2, R.L.M. James, Internal Memorandum, Colonial Office, September 1945; Telephone Interview, Ralph Lownie, 11 October 2007.
[77] TNA: PRO CO 877/23/2, R.L.M. James, Internal Memorandum, Colonial Office, September 1945.
[78] Anthony H.M. Kirk-Greene, 'On Governorship and Governors in British Africa' in Lewis H. Gann and Peter Duignan (eds.) *African Proconsuls: European Governors in Africa* (New York and London: Free Press, 1978), 210.
[79] Ibid., 212.
[80] Ibid.
[81] Ibid., 213.
[82] Examples in East Africa include Sir Philip Mitchell (1944-52) and Sir Edward Twining (1949-58). Sir Evelyn Baring, who served as governor of Kenya between 1952 and 1959, chose not to apply for a second extension. Ibid.

likely to be promoted faster from those positions. For instance, Sir Alexander Grantham, who eventually became governor of Fiji and Hong Kong, accepted the post of colonial secretary in Bermuda as he had heard that chances of promotion were high. He justified his policy stating that '[n]early everyone has their ambition to get to the top of this particular tree and my tree was the Colonial Service with a Governorship at the top'.[83]

Colonial territories comprised four grades. For instance, in 1946 there were ten first-class territories out of a total of approximately 40: Nigeria, Gold Coast, Kenya, Tanganyika, Ceylon, Palestine, the Straits Settlements, Hong Kong, Jamaica and Trinidad.[84] Somaliland and Nyasaland were examples of fourth-class colonies. It was possible for territories to be upgraded; for example, prior to 1932 Kenya and Nigeria were designated as second-class territories, but were upgraded in that year. After the independence of Ceylon and the partition of Palestine in 1948, Malaya, Nigeria and Kenya became the pre-eminent colonies. This structure was reflected in governors' salaries. For instance, in 1945, the governors of Ceylon and Palestine received annual salaries of £8,000. Kenya's governor was paid £7,500, Tanganyika's £6,000, while the governor of the Gambia was only paid £3,250.

Colonial governors were exceptionally well paid in comparison to civil servants and cabinet ministers in Britain; even the secretary of state for the colonies only received £5,000 before taxes were deducted. By contrast, nearly all colonial salaries were tax-free and most expenses were paid.[85] Governors were classified into five groups according to prestige, responsibility, and salary and allowances. Significantly, experienced governors were seldom posted to low-ranked territories where their experience and qualifications were most needed, as transfers were based on governors' seniority and pay scales.[86]

[83] Alexander Grantham, *Via Ports* (Hong Kong, 1965), 67.
[84] Kirk-Greene, 'On Governorship', 214.
[85] Ibid., 216.
[86] Creech Jones, 'Colonial Service', 94.

The following three tables compare transfer and promotion patterns between the governors of Kenya and Tanganyika, and the judges of the High Courts of Kenya and Tanganyika and Court of Appeal for Eastern Africa.

Table 3.6: Transfers and Promotions - Governors of Kenya and Tanganyika, 1895-1963.

Governors (25 in Total)	**Total**
Average number of transfers of individual governors	4.7
Average years of service prior to first governorship of individual governors	18.7
Percentage of governors appointed to governorships prior to East Africa appointment	40%
Percentage of governors appointed to governorships after East Africa appointment	24%

Table 3.7: Transfers and Promotions: Judges of the Court of Appeal for Eastern Africa, 1950-63.

Judges of Appeal (12 in Total)	**Total**
Average number of transfers of individual judges of appeal	5.8
Average years of service prior to first chief justiceship of individual judges of appeal	18.8
Average years between appointment to first chief justiceship and appointment to the Court of Appeal of individual judges of appeal	4.9
Percentage of judges of appeal not previously appointed to a chief justiceship	41.7%
Average years of service prior to appointment to the Court Appeal of judges not previously appointed to a chief justiceship of individual judges of appeal	19.8
Percentage of judges of appeal appointed to chief justiceships or Court of Appeal posts after East Africa appointment	41.7%

Table 3.8: Transfers and Promotions: Chief Justices of Kenya and Tanganyika, 1897-1963

Chief Justices (13 in Total)	**Total**
Average number of transfers of individual chief justices	4.5
Average years of service prior to first chief justiceship of individual chief justices	21.3
Percentage of judges appointed to chief justiceships prior to appointment in Tanganyika	60%
Percentage of judges appointed to chief justiceships after appointment in Tanganyika	31%

On average, Court of Appeal judges were transferred 5.8 times during their colonial careers, while colonial governors were transferred 4.7 times. Chief justices were transferred an average of 4.5 times. This supports the literature, which promotes the idea of a highly mobile judiciary. The average number of years served prior to an officer's first appointment as a chief justice or governor were similar, indicating how difficult it was to reach these positions of responsibility. Court of Appeal judges

served more than eighteen years before being appointed to chief justiceships. After an average of five additional years, they were appointed as appeal judges. Over 40 per cent of appeal judges, however, were appointed directly to the court without having served as a chief justice somewhere else, thus taking an average of four years less to reach the Court of Appeal. Promotions to this court were determined by a range of factors, including the status of the last colony a judge had served in and his previous service record as a puisne judge or attorney-general.

The tables also indicate the percentages of governors and judges who held positions before and after taking up their appointments in Kenya and Tanganyika. 40 per cent of governors held gubernatorial positions prior to their arrival in East Africa, and 24 percent move on to other governorships. This indicates that 76 per cent of governors retired after their terms in Kenya and Tanganyika, an indication of relatively high status of the colonies, as governors generally completed their colonial careers in the highest-ranked colony possible.

For appeal judges, approximately 42 per cent moved to courts outside East Africa, while 69 per cent of chief justices ended their careers there. The figures suggest that while Kenya and Tanganyika were both highly-ranked, they were regarded as more prestigious in the eyes of governors than of judges, given the fact that more judges ended their colonial careers in other territories.

3.6 Honours

The late nineteenth and early twentieth centuries saw the development of an elaborate honours system, which included the Most Eminent Order of the Indian Empire, the Imperial Order of the Crown of India and the Royal Victorian Order. The number of Knights Bachelor, who were not part of any order of chivalry, also increased dramatically in the period leading up to the start of the First World War.[87] In common with other services, members of the Colonial Service were included in the New Year and Birthday Honours lists. The Order of Chivalry normally associated with service in the dominions and colonies was the Most Distinguished Order of St Michael and St George, its chancery being in the Colonial Office itself. The other order closely associated with the colonial service was the Most Excellent

[87] Creech Jones, 'Colonial Service', 85-93.

Order of the British Empire. The most common honour awarded to governors was the KCMG and it was virtually unheard of for governors not to be awarded knighthoods.[88]

Knighthoods were an important symbol of status within the Empire. For example, Alistair Forbes, who was appointed as vice-president of the Court of Appeal for Eastern Africa in 1958, had previously served as an assistant legal adviser to the Western Pacific High Commission. It was his duty to redraft the laws of Fiji, for which he was offered a knighthood, a great honour for an officer in his thirties. He turned it down, however, stating that his enhanced status would result in him and members of his family being charged extra for goods and services. In 1960, he was offered the honour a second time, which he accepted.[89]

Table 3.9: Honours - Highest Award Received

	EACA	Chief Justices	Governors	Total
KG	-	-	1	1
GCMG	-	-	12	12
KCMG	-	1	8	8
GBE	-	-	1	1
KBE	5	-	-	5
Kt	7	12	-	19
No Data	-	-	2	2
No Award	-	-	1	1
Total	12	13	25	50

The table indicates that while all judges of appeal and chief justices were knighted, governors were more highly decorated. Even so, five out of 12 appeal judges were awarded the KBE, the equivalent of the KCMG within the Order of the British Empire. Most governors were awarded the KCMG, and were later awarded the highly prestigious GCMG. Sir Evelyn Baring, governor of Kenya between 1952 and 1959, was appointed a Knight of the Most Noble Order of the Garter, the Order that stands at the pinnacle of the honours system. The honour of KCMG was only conferred on a single judge, Sir William Alison Russell, who served as chief justice of Tanganyika. This was in recognition of his services both as a colonial judge and as a legal adviser in the Colonial Office.[90]

[88] Lewis H. Gann and Peter Duignan (eds.) *African Proconsuls: European Governors in Africa* (New York and London: Free Press, 1978), 254.
[89] *The Daily Telegraph*, 22 November 2001.
[90] Obituary in the *Law Journal*, 1 October 1948.

3.7 Conclusion

This chapter provides a profile of the type of person who joined the Legal Service as a junior legal officer, and who was later promoted to a judgeship in Kenya or Tanganyika. Once officers joined the Legal Service, transfers and promotions were closely correlated; accordingly, the highest-ranking judges in Kenya and Tanganyika had served in the greatest number of territories prior to their appointments in those territories. The honours conferred on judges were one of the indications of their position in the colonial hierarchy. On the whole, they were more decorated than their administrative counterparts, but governors remained the most highly-decorated group. This was further evidence that in each colony the chief justice was ranked second after the governor, both in remuneration and position within the state.

Legal officers were subject to more transfers than members of any another branch of the Colonial Service. This was an essential part of the promotions process, and officers who chose to serve in a single territory seldom rose beyond the ranks of the magistracy. The high number of transfers may explain judges' attitudes towards the administration of justice, in particular the fact that they often remained wedded to English law and procedure. These attitudes contrasted sharply with those of the majority of administrative officers who were generally stationed in a single territory throughout their careers. As a consequence, they were often more sympathetic to the needs of local peoples when administering justice. Judges spent far less time in a single territory than administrative officers, and would have had less exposure to indigenous populations and their laws and customs. As a consequence, they applied the law they knew best. These factors helped to create a unique sense of identity within the Legal Service, one that was shaped both in Britain and in the colonies.

CHAPTER FOUR

COLONIAL COURTS

4.1 Introduction

This chapter provides an overview of the establishment, development and consolidation of the legal systems in colonial Kenya and Tanganyika. The origins and evolution of court structures are explored in order to demonstrate policy changes over time. The formation of court hierarchies, and the main positions in the legal and judicial departments are also discussed. Before 1920, the judicial and legal departments were poorly organised and officers were only stationed in towns that had sizeable European populations. The interwar period saw the extensive development and expansion of these departments, particularly through the establishment of circuit courts. Despite many similarities between the legal systems of the two territories, there were fundamental constitutional differences. For instance, after Kenya was annexed as a colony in 1920, the powers of governors with respect to the administration of justice were greatly enhanced.[1] Tanganyika, however, was a mandated territory and, as a result, colonial power was tempered to a greater degree than in Kenya. In addition, the territory was subject to a 'double colonization, first by the Germans and German law, and thereafter by the British and British law'.[2] Although the territory adopted a legal system closely based on that of Kenya after Britain was granted mandatory powers over Tanganyika by the League of Nations in 1920, German influence continued in the way the district court system operated.[3]

English law was universally applied throughout the Empire with a few exceptions such as Ceylon, which had a Roman-Dutch legal system. In East Africa, it was supplemented by Indian codes that governed aspects of law and procedure, both civil and criminal. These were founded on English law, having been drafted by colonial judges in India with the purpose of creating a simplified body of law to be

[1] Between 1895 and 1920, East Africa was a protectorate and commissioners (governors) exercised relatively limited powers. These powers increased after Kenya became a colony in 1920. Anthony Allott, 'The Development of the East African Legal Systems during the Colonial Period', in D.A. Low and Alison Smith (eds.) *History of East Africa*, Vol. III. (Oxford: Oxford University Press, 1976), 348.
[2] Ibid.
[3] Ibid.

used by lay magistrates. Customary laws also existed in each territory, and judges' views as to their value and admissibility varied widely. As discussed in Chapter 3, colonial judges' training in English law allowed them to move between territories fairly easily. Some chose to engage with a particular territory's local laws and customs to a greater degree than others. In some cases, it is possible to attribute these attitudes to judges' career patterns. For instance, Sir Joseph Sheridan, some of whose judgments are considered in this chapter, served in East Africa for a total of 38 years. As a result of his long service in the region, he gained a sound knowledge of customary law, surpassing that of many administrative officers at the time. In addition to setting out the court structures and laws in Kenya and Tanganyika, the chapter provides the legal context for the rest of the thesis, which concentrates on legal developments in interwar Tanganyika and post-war Kenya.

4.2 Kenya's Early Legal History

The first court in East Africa was established in Mombasa in 1890 by the Imperial British East Africa Company, and was presided over by an English barrister, A.C.W. Jenner. Before this date, the only courts on the mainland were those of the Sultan of Zanzibar. Following the establishment of the East Africa Protectorate in 1895, the court was replaced by a consular court with jurisdiction, like the first court, over British and foreign persons but not Africans. In 1896, the British government appointed a 'legal vice-consul' to replace Jenner.[4] The court was replaced the following year by a court styled 'Her Majesty's Court for East Africa' with full jurisdiction, both criminal and civil, over all persons in the territory. It was presided over by a 'judicial officer', whose title was changed in 1899 to 'H.M. Judge'.[5] Appeals were heard in Zanzibar, and from thence to the Privy Council.[6] This court existed until 1902 when it was renamed the High Court of the East Africa

[4] Allott, 'Development of the East African Legal Systems', 348.
[5] Ibid.
[6] Iain R. MacNeil, 'Research in East African Law', *East African Law Journal* 47, no. 3 (1967), 871; the Privy Council is a body of advisers to the monarch. Although most executive powers are conferred by statutes on government ministers, the Order in Council remains an important means of giving the force of law to acts of the government, especially the more important executive orders. Orders in Council are made either under an Act, such as the Foreign Jurisdiction Act of 1890, or under the Royal Prerogative. Prerogative powers, theoretically handed down direct from monarchs to ministers, allow governments, among other things, to make treaties and grant royal charters. Available at www.parliament.uk, accessed on 25 February 2010.

Protectorate.[7] A second judge was appointed in 1902 and a third in 1906.[8] Prior to 1900, the main purpose of the establishment of the courts was to provide for the proper administration of justice according to English law for British subjects. Britain's main concern was to see that law and order were enforced, and was content to leave to the indigenous authorities the responsibility of administering the African population. This policy continued under the doctrine of indirect rule, and native courts were strengthened and developed; it was in these courts that the vast bulk of the work of administering justice to Africans took place.[9]

4.3 The German Period in Tanganyika

Prior to the outbreak of the First World War, the court system in German East Africa comprised three levels.[10] District officers and officers in charge of military stations presided over native courts, which exercised jurisdiction over Africans as well as Arabs and Indians. In the residencies of Bukoba, Ruanda and Urundi, however, native courts were presided over by African authorities.[11] District judges heard cases in district courts in Dar es Salaam, Tanga, Mwanza, Moshi and Tabora. Africans were not considered sufficiently advanced for 'white law' to be applied; as a result district courts only exercised jurisdiction over Europeans and those having the status of Europeans, an eclectic list that included Japanese, Parsees, Christian Syrians and Goans. District judges sat with two assessors in civil cases and four in criminal matters. With the approval of the superior judge[12] in Dar es Salaam, district judges had the power to authorise advocates to appear in their courts.[13]

Appeals from the district courts lay to the Superior Court in Dar es Salaam, which was presided over a single superior judge appointed by the imperial

---

[7] This court was were set up under the East Africa Order in Council, 1902. H.F. Morris and James S. Read, *Indirect Rule and the Search for Justice* (Oxford: Clarendon Press, 1972).
[8] Sir Robert Hamilton, 'Introduction' to EALR, Vol. I.
[9] Morris and Read, *Indirect Rule*, 75-79.
[10] The notes for this section appear in the first volume of the Tanganyika Revised Law Reports published in 1955 (TLR (R)) and are based on articles published by Dr Johannes Gerstmeyer, who served as German East Africa's superior judge in 1904; the four principal pieces of legislation applied in German East Africa were the Protectorate Law of 10 September 1900, the Law of Consular Jurisdiction of 7 April 1900, the Imperial Ordinance of 9 November 1900 and the Order of the Imperial Chancellor of 25 December 1900.
[11] TLR (R), vi.
[12] *Oberrichter*.
[13] TLR (R), v.

chancellor.[14] Appeals from the native courts, however, lay directly to the governor, who normally referred them to the Superior Court.[15] The superior judge, who sat with four assessors, was also responsible for supervising district judges and revising decisions in criminal matters from both district and native courts.[16] Apart from ordinances and regulations issued from time to time by the governor, there was no general law relating to Africans. This meant that in the vast majority of cases, the word of the district officer was the only code that applied; on the whole, district officers were simply instructed by the government to base their judgments on European legal principles, common sense and customary law.[17] The most significant difference between the German and British legal structures was that, unlike the British system, there was no formal separation between the executive and the judiciary under German rule. Even though the independence of the judiciary during British rule has been justifiably questioned, there was an attempt to maintain a separation between the two organs of state throughout the colonial period.[18]

Martial law was proclaimed over those parts of German East Africa occupied by the British forces in March 1916. Between that date and 1919, proclamations and regulations for the governance of both the military and civilian areas were issued by the military authorities and the civil administrator. In April 1919, the administration of the territory was vested in the Office of the Administrator, and criminal courts of various grades were constituted. These included special courts, magistrates' courts, courts of district political officers, and native courts. These courts had jurisdiction to try offences against martial law, breaches of certain German ordinances as well as offences defined in the Indian Penal Code. The Indian Code of Criminal Procedure and the Indian Evidence Act formed the basis of the procedural law adopted by these courts. District political officers were also given jurisdiction to hear civil matters between African parties.[19] Following the creation of the mandated territory of Tanganyika in 1920, a High Court modelled on the institution founded in the East

---

[14] *Obergericht*.
[15] M. Louise Pirouet, *Historical Dictionary of Tanzania* (London and Lanham, MD: Scarecrow Press, 1977), 110.
[16] TLR (R), v-vi.
[17] Jan-Georg Deutsch, 'Celebrating Power in Everyday Life: The Administration of Law and the Public Sphere in Colonial Kenya, 1890-1914', *Journal of African Cultural Studies* 15, no. 1 (2002), 100.
[18] Ibid.
[19] TLR (R), vi.

Africa Protectorate was established.

4.4 The Structure of Colonial Courts

The key feature of the British colonial legal systems in Kenya and Tanganyika was that they were dualistic: they consisted of courts and law of British origins, and courts and law derived from traditional institutions.[20] The former applied mainly English law and local modifications that were made of it; the latter, which consisted of courts of original jurisdiction and appeal courts, chiefly applied customary law or such part of it not considered to be repugnant to the principles of 'natural justice, equity and good conscience' or inconsistent with any other laws in the territories.[21] On the whole, the two systems operated separately although there were arrangements for the transference of decisions to the district magistrates' courts, which held wide powers of review. Although certain categories of cases such as land tenure, customary marriage and inheritance were excluded from the original jurisdiction of both district magistrates' courts and High Courts, both had appellate jurisdiction in such matters. In this way, customary cases entered the British-established system at the district magistrates' court level.[22]

4.4.1 Court of Appeal for Eastern Africa

The Court of Appeal for Eastern Africa was established in 1902, from which appeals lay directly to the Judicial Committee of the Privy Council. The Court of Appeal heard appeals from the East Africa Protectorate, Uganda and Nyasaland; appeals from Zanzibar continued to be heard by the Bombay High Court until 1914.[23] Tanganyika was added in 1921 and Aden in 1947. In the same year, appeals from Nyasaland began to be heard by the newly constituted Court of Appeal for Rhodesia and Nyasaland. In the 1950s, the court's jurisdiction was extended to the Seychelles, Somaliland and St Helena.[24] The powers of the Court of Appeal depended on the laws prevailing in the various territories; in general, it heard both civil and criminal

[20] Allott, 'Development of the East African Legal Systems', 348.
[21] T. Olewale Elias, *British Colonial Law: A Comparative Study of the Interaction between English and Local Laws in British Dependencies* (London: Stephens and Sons, 1962), 20.
[22] Ibid., 21.
[23] Allott, 'Development of the East African Legal Systems', 362.
[24] Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (London: Stevens and Sons, 1966), 760.

matters, but in the case of Seychelles only criminal matters were referred to the court. As the territory's civil law was based on French law, civil appeals were heard by the Supreme Court of Mauritius.[25]

Prior to 1950, the president of the Court was always the chief justice of Kenya. When the Court sat outside Kenya, he acted as the chief justice of the territory concerned, and the chief justice himself became the second-ranked judge.[26] After Kenya was proclaimed a colony in 1920, legislation was passed setting out the seniority of the judges who staffed it.[27] When the court sat in Kenya, chief justices were ranked in the following order: the chief justices of Kenya, Uganda and Tanganyika; the judge of Nyasaland; and the chief justice of Zanzibar. Other judges were ranked according to the date on which they were appointed.[28] This system lasted until 1950, when a permanent appeal court was established, staffed by a president, vice-president and one or more justices of appeal. The High Court judges in the various territories were expected to act as appeal judges when required. The court, which previously had no headquarters, was permanently based in Nairobi with its own registry; judges of appeal, however, continued to travel on circuit to Dar es Salaam, Kampala, and Mombasa.[29]

4.4.2 Supreme and High Courts

Once Kenya became a colony in 1920, the High Court was renamed the Supreme Court. Tanganyika's lower status as a mandated territory meant that its superior court continued to be known as the High Court.[30] These courts had full powers of revision and appeal over resident magistrates' courts, district courts and native courts until the mid-1930s. During this period, most customary law cases reached the superior courts only on appeal from native courts; only a handful that were heard by the High Courts sitting as courts of first instance. This was in stark contrast with the situation in West Africa where family and land matters were frequently heard by the High Courts. This was arguably because the region had been under colonial

[25] Roberts-Wray, *Commonwealth and Colonial Law*, 761.
[26] Ibid., 131-134; Appendix II. of EALR, Vol I., 113
[27] Roberts-Wray, *Commonwealth and Colonial Law*, 131-134.
[28] Article 7 of the Eastern African Court of Appeal Order in Council, 1921.
[29] Allott, 'Development of the East African Legal Systems', 379.
[30] Referred to collectively in this thesis as the 'High Courts'.

administration for a much longer period; in addition, there were substantially more African lawyers than in East Africa.[31] During the interwar period in East Africa virtually all contact between the native courts and High Courts was removed, as appeals from the native courts were brought within the exclusive jurisdiction of specially created administrative tribunals.[32]

4.4.2.1 Chief Justices

In the period before the First World War in the East African Protectorate, the chief justice was a central figure of the small number of colonial officials in control of the territory. In addition to his judicial duties, was responsible for drafting ordinances, a role that was later assumed by the attorney-general.[33] Judicially, a chief justice was merely the first among equals, but he was senior to his fellow judges in his administrative capacity. His responsibilities included arranging the daily lists of cases, organising circuits, and assigning judges to various courts, both in the principal centres of Nairobi, Mombasa and Dar es Salaam, and in smaller rural centres. He was the spokesman for the puisne judges and transmitted their views, opinions, requests and complaints to either the governor or the Colonial Office. He also compiled annual progress reports on members of the judiciary and magistracy, an essential part of the promotions and retention processes in the Legal Service.[34]

4.4.2.2 Puisne Judges

Puisne judges heard cases in the High Courts and supervised, reviewed and confirmed the decisions of the lower courts. In addition to court work, they were responsible for presiding over commissions of inquiry. In both East and West Africa, the majority of district magistrates' courts (as opposed to resident magistrates' courts) were presided over by administrative officers. This made the work of supervision, correction and, on occasion, admonition, often delicate. Judges needed to point out that important rules of law were not mere technicalities, but were often as important as factual findings. They had to be diplomatic in their dealings with the hard-

[31] Morris and Read, *Indirect Rule*, 174.
[32] Ibid., 21-2.
[33] Ibid., 79.
[34] TNA: PRO CO 877/58/10, A. Russell, 'The Colonial Legal Service and the Administration of Justice in Colonial Territories', December 1952.

working administrative officers who generally sought to perform their judicial duties well, despite the fact that they seldom had legal qualifications.

By 1943, there were five judges in each territory; in addition, there were five resident magistrates in Kenya and six in Tanganyika. Both judicial departments increased greatly after the Second World War and by 1956, Tanganyika had six judges and 28 magistrates. As a result of the Emergency in Kenya, the size of its judiciary reached its peak in 1955, when there were 11 judges and 17 resident magistrates, four of whom acted as judges on a number of occasions. Although the number of resident magistrates increased to 25, the number of puisne judges dropped to seven in 1956.[35]

4.4.2.3 Registrars and Clerical Staff

The High Court registries were headed by registrars who were normally assisted by two deputies, one having responsibility over civil matters and the other over criminal cases. From the beginnings of British rule in the East Africa Protectorate, non-European staff formed an important part of the judicial department, especially as clerks and interpreters. Many were industrious and competent. This was attested to by a former deputy registrar of the Supreme Court of Kenya, Ralph Lownie, who praised the Asian clerks who staffed the registry in the late 1950s.[36] Some worked their way up the system, eventually qualifying as advocates. For instance, E.P. Nowrowje, the son of a railway employee who started in government service as a Gujarati interpreter. Over two decades later, he applied to the chief justice for leave to travel to London in order to be called to the Bar. He returned to Kenya three years later, and eventually became a highly successful advocate at the Nairobi Bar.[37]

Non-Europeans in the Judicial Department were classed into three racial categories: Asian, Goan and African.[38] Medical lists from the 1930s suggest that

---

[35] *Kenya Staff Lists* (Nairobi: Government Press).
[36] Telephone Interview, Ralph Lownie, 11 October 2007.
[37] Interview, Pheroze Nowrojee, Nairobi, 14 December 2007.
[38] With regard to the colonial policy of classifying Goans separately from Asians, Elizabeth Hopkins wrote that '[t]he Goan community…presented certain taxonomic problems, for though originally from India, they came from an area which was under Portuguese, not British, control. In addition, in East Africa they have retained their Portuguese citizenship. To compound further their ambiguity of status, they were Catholic and normally of mixed Portuguese-Indian ancestry with singularly un-Asiatic surnames such as Dias, Fernandez and Sequiera. Marginal to the Indian community, they were the object of ambivalence for the European as well, for it was difficult to establish a behavioural

while Asians dominated the clerical staff, the number of Africans slowly increased during the course of that decade while the number of Goans decreased. For example, in 1931 the Judicial Department consisted of 19 Europeans and 59 non-Europeans. Of those, 39 were Asian, 13 were Goan, and only six were African.[39] By 1938, there were 22 Europeans and 53 Non-Europeans. Of those 40 were Asians, four were Goan and 10 were African.[40]

4.4.3 First Class Subordinate Courts and Resident Magistrates' Courts

The provincial administration in Kenya consisted of provincial commissioners, district commissioners and assistant district commissioners. Provincial commissioners often had long experience of district work, and supervised and co-ordinated district commissioners within their respective provinces. Consequently, they had far less direct contact with Africans than their inferiors. They also played an important part in formulating policy through periodic conferences with other senior members of the administration.[41] Although they played a lesser role in the administration of justice, they were, by virtue of their office, first-class magistrates. Accordingly, they heard appeals from the second and third class district magistrates' courts, which were presided over by district commissioners and assistant district commissioners respectively.[42]

Resident magistrates' courts heard more serious criminal cases as well as larger civil cases involving members of all race groups, and were presided over by legal officers who had mostly qualified as lawyers in Britain. There were few civil cases involving Africans, and, unlike Britain, the right to be tried by jury was not open to them. Instead two assessors were appointed who expressed their opinions at the end of the case, which were not binding.[43] In contrast to district courts, advocates

---

correlate for such overlapping claims to both a European and Indian identity'. Elizabeth Hopkins, 'Racial Minorities in British East Africa', in Stanley Diamond and Fred G. Burke (eds.) *The Transformation of East Africa: Studies in Political Anthropology* (New York and London: Basic Books, 1967), 85-86.

[39] KNA AP 1/1682, Kenya Judicial Department Annual Medical Report for 1931.

[40] KNA AP 1/1795, Kenya Judicial Department Annual Medical Report for 1938.

[41] Morris and Read, *Indirect Rule*, 17.

[42] C.C. Trench, *Men Who Ruled Kenya: The Kenya Administration, 1892-1963* (London and New York: Radcliffe Press, 1993), 69.

[43] Cmd. 4623, *Report of the Commission of Inquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika Territory in Criminal Matters* (London: HMSO, 1934), Samuel J. Thomas, Memorandum, Nairobi, 5 April 1933.

were permitted to appear in resident magistrates' courts, which had purpose-built courtrooms.

4.4.4 Second and Third Class Subordinate Courts

District commissioners implemented government policy on the local level; during the interwar period, a district commissioner typically had a number of officers from other departments stationed in his district. These included doctors, veterinary surgeons and policemen, and he was responsible for co-ordinating their work.[44] Apart from his general functions such as overseeing basic civil engineering projects, he had two principal functions: to oversee the collection of revenue in his district, and ensure the maintenance of law and order.[45] In carrying out these responsibilities, district commissioners frequently went on tour and held public meetings, or *barazas*, in villages, which typically lasted two days.[46] In addition to attending to general matters such as agriculture, schools and government policy, district commissioners inspected chiefs' accounts for poll tax and native administration tax. In their capacity as district magistrates, district commissioners exercised powers of inspection, supervision, revision and appeal, and native court records were usually inspected at *barazas*. Revisions were sometimes made at the hearings, but such cases were usually taken to the district headquarters for further deliberation.[47] Their critics argued that as foreigners they were not capable of penetrating African thought and society and that at best they were paternalistic, and at worst autocratic. On the other hand, their supporters believed that given the state of social and political development in Kenya and Tanganyika prior to the Second World War, they represented the most effective means of colonial rule.[48]

4.4.5 Native Courts

At the bottom of the hierarchy were the native courts.[49] These were presided over by chiefs who derived their authority from the Native Authority Ordinances.[50] It was

---

[44] Morris and Read, *Indirect Rule*, 18.
[45] Ibid., 19.
[46] Ibid.
[47] Ibid., 19-20.
[48] Ibid., 10.
[49] In Kenya and Tanganyika, there were also three classes of subordinate Muslim courts: courts of the liwalis, cadis and mudirs, in descending order of importance. Elias, *British Colonial Law*, 22.

the duty of chiefs to maintain order within their jurisdictions by exercising the powers conferred on them by colonial ordinances together with the authority they possessed under customary law. Their duties were to assist in the prevention of crime and the arrest of offenders. Power was also conferred on them to issue orders (by-laws), which were binding on Africans under their jurisdiction. These orders covered a wide range of public issues such as the control of alcohol; the carrying of arms; the cutting of timber; tax collection; the prevention of the spread of disease; and the regulation of the movement of Africans from the jurisdiction of one chief to another. In addition, district or provincial commissioners had the power to direct chiefs to issue and enforce government orders, or issue orders themselves. Chiefs who failed to obey such orders risked being fined or imprisoned for periods of up to two months. In addition, any chief who neglected to issue an order when directed to do so was guilty of an offence.[51] In civil matters, the law was entirely customary in nature while in criminal matters the law was a mixture of customary and statutory law; it was in these courts that most of civil litigation took place. The criminal jurisdiction of African courts was significantly circumscribed, however, both in terms of sentencing and the types of matters that could be heard. In general, serious offences were prosecuted in the resident magistrates' and High Courts.[52] Over time, the courts were transformed from simple customary tribunals into courts of justice, with written records and an established procedure modelled on that of the subordinate courts.[53]

4.5 The Legal Department

The attorney-general advised the governor on the legal aspects of government policy. He was also an important member of the Executive Council, the body that advised and acted with the governor in matters of government policy. His technical knowledge placed him in a position to pronounce authoritatively on the legality of policy, particularly in draft legislation. The character of an attorney-general was important as he sometimes needed to tactfully persuade the Executive Council that certain policies were against the interests of the territory. This was especially

---

[50] The East Africa Protectorate Native Authority Ordinance, 1912 was the model for those passed in Uganda in 1919, and in Tanganyika in 1921 and 1923. Ibid., 21.
[51] Elias, *British Colonial Law*, 21-2.
[52] Ibid., 75-77.
[53] Ibid., 158-159.

important in the confirmation of death sentences, for which the governor was responsible. In legislative matters the attorney-general predominated. All legislation was drafted by his department, under his direction or supervision. He was also a member of the Legislative Council and was responsible for introducing and explaining legislative bills. Sometimes laws were disallowed by the secretary of state and sent to the Colonial Office for scrutiny. The attorney-general then certified whether or not the amended ordinance in question complied with the conditions prescribed for its legality.[54]

In the field of criminal justice, prosecutions for certain offences could not be instituted without his sanction. When an accused was committed for trial, the attorney-general could decide whether or not to prosecute, remit the case for further investigation, or draft the information (summary of charges) on which the accused was to be tried in court. The attorney-general also chaired committees of inquiry in disciplinary matters involving government officials.[55]

He could appear for the government in any criminal or civil case. Finally, he was the titular head of the local Bar, and was expected to be its spokesman in the courts and before the government. Attorneys-general often competed with the most capable senior puisne judges for appointment as chief justices. The solicitor-general was mainly responsible for representing the government in civil suits, and acted as attorney-general, if the incumbent was on leave.[56] The work of crown counsel was largely forensic, and included prosecuting offences and representing the government in civil matters. They also assisted the attorney-general in the drafting of bills.[57]

4.6 Law

4.6.1 English Law and the Indian Codes

The jurisdiction of these courts was exercised in terms of various Indian codes and local ordinances. Insofar as these did not apply, the courts were empowered to refer to the common law, doctrines of equity, and statutes of application then in force in

[54] Charles Jeffries, *The Colonial Empire and its Civil Service* (Cambridge: Cambridge University Press, 1938), 143.
[55] Ibid.
[56] Ibid., 144.
[57] TNA: PRO CO 850/189/4, Internal Correspondence, East Africa Department, 12 April 1943.

England.[58] The practice and procedure of the courts was governed by the Indian codes, but the basic procedural law was English. The reception clause obliged the courts to impose English law as the residual law in Kenya and Tanganyika. This meant that English cases were referred to when applying or interpreting the Indian Codes.[59] Partly as a result of the close political and trade relations between India and Zanzibar, the British government drew largely on Indian civil and criminal law, which were applied to its subjects in the Sultan's dominions.[60] The IBEAC and the early colonial administration that succeeded it looked to the Indian administration as an example in the methods of government. There were also direct contacts as a substantial number of British officers, both civil and military, who had seen service in India, were stationed in the East Africa Protectorate. Furthermore, there was an increasing influx of Indians into the territories. District commissioners in India used a codified body of law that had been adapted from English law for local conditions. The Indian codes covered a wide range of subjects including criminal law, criminal and civil procedure, evidence, contract, and succession. Jurists had taken the unwritten English law, removed its anachronisms and technicalities, and repackaged it in a concise form for use by district commissioners in their capacity as lay magistrates. In other words,

> much of English law [was] received by the African territories at one remove, through their adoption of Indian laws; though it must be remembered that sometimes the rules of English law have suffered a sea-change when passing through the hands of Lord Macaulay or other eminent draftsmen of the Indian Codes.[61]

In 1930, new Penal and Procedural Codes were introduced that were based on a draft prepared by the Colonial Office modelled on the Nigerian Code; they also

---

[58] The common law is all the unenacted portion of the law of England and Wales, in other words, the law created by the judges through the cases. The doctrines of equity are the name given to a body of legal principles that supplement rules of law, where the application of such law would be 'repugnant to natural justice, equity and a good conscience'. The statutes of general application refer exclusively to statutes in force in England and Wales at the time English law was formally implemented in a territory. Anthony Allott, *Essays in African Law with Special Reference to Ghana* (London: Butterworths, 1960), 8.

[59] Yash P. Ghai and J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Nairobi and New York: Oxford University Press, 1970), 171.

[60] Ibid., 4-6.

[61] Allott, *Essays in African Law*, 6.

included some provisions from the Indian Penal Code. The original model for the Nigerian Code was the Queensland Criminal Code of 1899, which was largely drafted by Sir Samuel Griffith QC, who later became the first chief justice of the High Court of Australia. He based it on the English Criminal Code Bill of 1880 and the Indian Penal Code of 1860 drafted by Lord Macaulay between 1834 and 1838.[62] Thus the new East African Codes stood 'in one of the main streams of criminal codification within the Commonwealth', and were later the basis of enactments in other territories, such as the Gambia, Cyprus, the Seychelles and Fiji.[63] This is an excellent example of the transfer of legal knowledge around the Empire, and the dominant position of the global over the local.[64]

The offences, defences and punishments set out in the codes were drafted with relatively little regard for their African contexts. As a result, it is difficult to find any provisions in the codes that resulted from a response to local conditions. This lends support to the argument that greater importance was placed on ensuring that the new codes were suitable for application in diverse territories throughout the Empire, rather than on tailoring them to suit local conditions.[65]

4.6.2 Customary Law

The imposition of a British legal system in Kenya and Tanganyika was arguably the most important agent of change in customary law and procedure during the colonial period. The general policy of the European powers was to introduce their own law and system of courts, but also to retain customary law and procedure to the extent that they did not deem it contrary to their conception of justice or morality. The main difference between the European powers and Britain, however, was that the former promoted a policy of assimilation, whereby Africans were encouraged to adopt European law, whereas Britain favoured a policy of indirect rule.[66]
The Colonial Office's policy was that English law should be administered subject to local circumstances. Whereas native courts were empowered to administer the

---

[62] J.J.R. Collingwood, *Criminal Law of East and Central Africa* (London: Sweet and Maxwell, 1967), 6.
[63] James S. Read, 'Crime and Punishment in East Africa: The Twilight of Customary Law', *Howard Law Journal* 10 (1964), 165.
[64] Interview, Victor Lal, Oxford, 28 February 2007.
[65] Morris and Read, *Indirect Rule*, 165.
[66] Eugene Cotran and N.N. Rubin, 'Introduction' in Cotran and Rubin (eds.) *Readings in African Law*, Vol. I. (London: Frank Cass, 1970), xx.

customary law prevailing in a particular jurisdiction, the High Courts and resident magistrates' courts were merely guided by customary law in their decisions.[67] In his landmark judgment in *Nyali v Attorney-General*, Lord Denning reminded the Kenyan judiciary that English common law embodied many principles that could be applied to all races throughout the Empire. He added, however, that its many refinements were not always applicable in the colonies and that the common law should be revised. In order for the two bodies of law to co-exist, the common law needed to be applied with major qualifications.[68]

The influence on customary law by English legal thought can be seen most clearly in the transformation of traditional modes of trial though judicial practice and statutory provisions, rather than with respect to substantive law.[69] On the whole, colonial judges, when compared with district commissioners, made relatively little effort to inquire into and apply customary law. For example, with regard to the ascertainment of customary law, district officers often inquired into local customs in the course of their general work and drew on the work of legal anthropologists. By contrast, judges frequently required particular customary laws to be proved by expert witnesses who were subjected to cross-examination. In other words, it was a matter for formal proof that was not assumed to be within the judicial knowledge of the courts.[70]

The judges often failed to grasp the enormous differences between the two systems. In the words of Iain MacNeil,

> [t]he essence of customary law may be that even litigation is a negotiation process, the goal of which is the pacifying of the parties rather than ensuring the "rights" of an injured party [and] to provide a satisfactory framework for future relations, whether or not the judgment conforms to precedent. There is a large and essential element of "unknowability" and an attempt to make it known in the same way as non-customary law is to fundamentally change its character.[71]

---

[67] Cotran and Rubin, 'Introduction' , 174.
[68] [1956] 1 QB 1., cited in Eugene Cotran, 'The Development and Reform of the Law in Kenya', *Journal of African Law* 27 (1983), 42-61.
[69] Morris and Read, *Indirect Rule*, 187-188.
[70] Ibid.
[71] McNeil, 'Research in East African Law', 878.

In *R v Amkeyo*, for example, the accused person was charged with the offence of possessing stolen property, namely an animal hide.[72] The chief witness against him was a woman who he claimed to be his wife according to customary law. According to the Indian Evidence Act, which was based on English law, a spouse could not testify against the other as there was a strong possibility that such testimony would weaken the mutual confidence upon which the marriage was founded.[73] If, therefore, the union was declared a valid marriage, her evidence would have been rendered inadmissible. In his judgment, the chief justice of the East Africa Protectorate, Robert Hamilton, expressed the general attitudes of the early judges towards African custom, namely that English law was superior to customary law. He stated that

> [i]n my opinion, the use of the word 'marriage' to describe the relationship entered into by an African native with a woman of his tribe according to tribal misnomer which led in the past to considerable confusion of ideas. I know of no word that correctly describes it; 'wife purchase' is not altogether satisfactory, but it comes nearer to the truth than that of 'marriage' as generally understood by civilised peoples.[74]

The principle of judges being guided rather than bound by customary law persisted, although some judges made a concerted effort to investigate such laws fully before giving their decisions. In *Re G.M. (An Infant)*, a 1957 decision in the Supreme Court of Kenya, the court inquired into both customary and English law in reaching its decision. The facts were as follows: a Kikuyu child had been orphaned and sent to a Salvation Army home in Nairobi. Subsequently, with the approval of the district commissioner, a comparatively affluent Nandi woman obtained custody over the child.[75] The brother of the child's deceased father later claimed custody under Kikuyu law and custom, stating that he had a custodial right against all other claimants. In his judgment, Basil Miles commented that the position in English law was clear: the welfare of the child was the paramount consideration and, in this case, it was clearly evident that it would be in the best interests of the child to remain with the respondent. He decided to separate the inquiry into two parts. First, he inquired into the applicability of English law; second, he examined the rights of the parties

---

[72] 7 EALR 14.
[73] 7 EALR 14 at 15.
[74] Ibid.
[75] [1957] EA 714.

under customary law. He referred to a binding Court of Appeal of Eastern Africa decision that also concerned the custody of a child in Kenya, and included this quotation by Sir Joseph Sheridan in his judgment:

> [b]efore concluding I should like to state my opinion that even though the principles of English law may apply to such cases as the present, in considering the all important question of the child, the customs and habits of the community to which the child belongs, must be given serious consideration.[76]

He further quoted from the judgment of N.H.P. Whitley, Uganda's chief justice:

> [t]he word 'welfare' must be taken in its widest sense…I would add that in my opinion this court in applying those very wise and beneficent principles as laid down by the courts in England, should in this colony have regard to the customs of the race and community to which the child belongs.[77]

It was evident that the Court of Appeal confined considerations of customary law to the question of the welfare of the child, and did not extend them to the question of the rights of the parties. As a consequence, the question of the parties' rights fell to be determined according to English law.[78] Notwithstanding the Court of Appeal's decision in favour of applying customary law, Miles chose to inquire into what the position of the applicant was under both kinds of law. It was clear that under Kikuyu law and custom, the applicant was the guardian of the child, with greater obligations than a guardian under English law. In addition, he was not bound to support the child except out of her estate. On the other hand, counsel for the respondent argued that only a parent had any right to custody of a child under common law. Miles, however, referred to a number of English decisions that supported the principle that, under equity, regard was always given to the parents, but also, in certain instances, to relations on the mother's side. Natural relationship was therefore regarded as being of benefit to the child.[79] In his opinion, the respondent could be regarded as a legal guardian, even though he was the brother of the child's father. Accordingly, he ruled

---

[76] *Mohamed Hassan v Nana Binti Mzee* (1944) 11 EACA 4 at 6.
[77] (1944) 11 EACA 4 at 7.
[78] Ibid.
[79] *R v Nash* (1883) 10 QBD 454 at 456; *In re Andrews* (1873) LR 8 QB 153.

that the applicant had a right to custody of the child under both customary and English law.[80]

In some cases towards the end of colonial rule, the courts questioned the legality of particular customary laws on the basis that they violated the principles of natural justice. One example is the principle in customary law that lapse of time was no bar to bringing an action, especially with regard to land claims. In the 1962 case of *Munyae and Muthwa v Kilili and Maithya*, the respondents had occupied land since 1924 without being asked to vacate.[81] Under Kamba law, a tenant had no title to the land he rented, regardless of the length of time he had resided there. The court held, however, that in terms of natural justice, as opposed to common law, the occupiers had acquired the rights of owners.[82] The second law was the granting of legal rights over a child to a man who had paid a bride price in respect of the child's mother. Even if he later became separated from his wife, he retained these rights in respect of children later born by her who were not his own offspring. In *Nyaberi v Nyabonga*, the Court of Review held that the husband's rights over his wife's children were unenforceable in cases where he had refused a divorce on the ground that the bride price had not been returned.[83] Luhya law also entitled a husband whose bride price had not been returned, to legal rights over his wife's children. The law also provided, however, that the interests of the child should be considered, and the child was permitted to remain with the wife and the other children. In *Olenja v Keya*, the court adapted its own conception of natural justice and awarded the husband and wife legal custody and physical custody respectively.[84]

All courts were required to apply customary law 'so far as it was not repugnant to natural justice and morality', but British courts generally paid little heed to this when cases came before them on revision or appeal.[85] The Tanganyikan case of *Gwao bin Kilimo v Kisunda Bin Ifuti*, heard in 1938 by Mark Wilson, was an exception to this trend. One of a handful of reported cases on the subject, it concerned a custom of the Turu people that permitted the attachment of cattle belonging to the

[80] [1957] EA 714 at 717.
[81] (1962) 10 Court of Review Law Reports, cited in Morris and Read, *Indirect Rule*, 178.
[82] Ibid.
[83] (1953) 1 Court of Review Law Reports, 5, cited in ibid., 179.
[84] *Olenja v Keya* (1962) 10 Court of Review Law Reports, 8-9, cited in ibid.
[85] Cotran, 'Introduction' in *Readings in African Law*, xxi.

father of a debtor. A government tax clerk named Mange, who resided in Singida, collected Shs. 10/- from Kisunda, the respondent in this case, but issued him a forged tax ticket and embezzled the money.[86] Kisunda then sued Mange in a civil court and obtained a court order authorising him to recoup the money through any lawful means. Using this order, Kisunda proceeded to seize two cows owned by Mange's father, Gwao, the applicant in this case. Gwao unsuccessfully objected to the attachment of his cattle in the district court, and the case was sent on revision to the High Court in Dar es Salaam. The issues facing Wilson were twofold. First, was there an authentic customary law of the Turu that allowed the seizure of a father's property in compensation for a wrong done by his son? Second, if so, was the law in accordance with the Tanganyika Order in Council of 1920? This piece of legislation set out the criteria governing the applicability of customary law.[87] It read as follows:

> [i]n all cases, civil and criminal, to which native are parties every Court…shall be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council or Ordinance…[88]

With regard to the first issue, Wilson was unconvinced about the existence of such a custom, as seven out of the eight witnesses who testified supported the view that no law of the Turu compelled a father to pay compensation for his son's wrongdoings. In fact, the only witness to state categorically that the tribe would compel the payment of compensation by a father for his son's misfeasances was a district officer with only about four years' experience of the area.[89] Under cross-examination, he was forced to admit that the alleged custom was not widely practiced and could not recall, when pressed, a single case in which the practice was enforced. When applying the law to the facts of the case Wilson stated that

> I have no doubt whatever that the only standard of justice and morality which a British Court in Africa can apply is its own British standard. Otherwise we should find ourselves in certain circumstances having to condone such things, for example, as the institution of slavery. On this basis then the justice of applying to the present circumstances the native "law" which has been postulated in this case must be decided. Is it just according to our ideas to

[86] (1938) 1 TLR (R) 403.
[87] Kenya's Order in Council, 1920 contained the same provision.
[88] Article 24, Tanganyika Order in Council, 1920, cited in (1938) 1 TLR (R) 403 at 404.
[89] (1938) 1 TLR (R) 403 at 404.

> take away a man's property in order to compensate a party who has suffered injury at the hands of the man's son, the son being of full age and fully responsible in law for his own actions? I hold most strongly the opinion that it is not just. Each case must, of course, be decided on its facts, but in the present case the son is an employee of the Government, and therefore no doubt to some extent removed from the sphere of tribal influence and sanctions. His defalcations have in no way benefited his father or his family. It is against our general ideas of justice that a man should suffer or be punished directly either in person or in property for some wrong which he has not done himself, though of course in the nature of things it is often impossible to avoid the infliction of indirect suffering or loss in such cases. The Mosaic law no doubt contemplated that the sins of the fathers should be visited on the children unto the third and fourth generation, but it is certainly contrary to the principles of British justice that the sins of the sons should be visited on the fathers, when the sons are themselves fully responsible in law.[90]

Accordingly, Wilson reversed the decision and ordered the return of the cattle to Gwao. The case is important as it illustrates how the repugnancy provision was applied, not only in respect of a particular rule of customary law, but also to the operation of that rule in a particular situation.[91]

4.7 Conclusion

Changes in the organisation of the judicial and legal departments were part of wider developments that occurred in Kenya and Tanganyika, as Britain sought to establish and consolidate its position in the territories. Between 1897 and 1920, the legal and judicial departments were notable for their ill-defined policies, and judges and magistrates were only stationed in those towns that had sizeable European populations. The interwar years saw extensive development and expansion of the judicial and legal departments, particularly through the establishment of circuit courts. By the 1950s, the two departments were firmly established, and continued operating virtually unchanged after both territories had achieved independence.

The application of customary law by judges became a highly contentious issue, as district commissioners claimed that the judiciary had little interest and knowledge of local laws and customs. The ways in which individual judges applied customary law can be seen as an indication of whether they performed their judicial role more as servants of the Empire than as servants of the colonial state. For

[90] (1938) 1 TLR (R) 403 at 405.
[91] Morris and Read, *Indirect Rule*, 176.

example, Sir Joseph Sheridan, who spent his entire career in East Africa, and Sir Mark Wilson, who began his career as an administrative cadet in Tanganyika before transferring to the Legal Service, fulfilled an essential role as judges who were conversant with local laws and customs. Others, such as Sir Robert Hamilton, approached customary law from the perspective of an outsider, one whose loyalties lay more to the Empire than to East Africa. The chapter thus highlights the existence of divisions within the colonial judiciary that arose from differing attitudes towards customary law. Fissures within the colonial judiciary were a characteristic of its identity, and form the basis of Chapter 8, where divisions between judges of Supreme Court of Kenya and the Court of Appeal for Eastern Africa during the Mau Mau rebellion are investigated.

CHAPTER FIVE

IDEOLOGICAL CONFLICT

5.1 Introduction

This chapter outlines the major themes that dominated Kenya and Tanganyika's legal 'world' during the interwar period. The most important of these was the doctrine of indirect rule, which was the prevailing administrative policy during the period. It was a source of controversy in itself, as one of the central tenets of the doctrine was the maintenance of customary courts under the supervision of administrative officers rather than under the judges. Directly linked to the legal problems brought about as a result of the doctrine of indirect rule were disagreements between the two sides as to the applicability of English law and customary law. Administrative officers objected to the application of the former, as they believed only customary law should be applied in the case of Africans. Their clear-cut views, however, didn't always match the reality on the ground. For instance, some Africans who had become successful businessmen objected to their exclusion from 'British' civil courts, which would have given them the opportunity to sue their European trading partners.

The chapter focuses on events surrounding the Bushe Commission, which conducted an investigation into the administration of justice in Kenya, Uganda and Tanganyika in 1933. It was chaired by the legal adviser in the Colonial Office, H. Grattan Bushe, and comprised the attorney-general of Kenya, a judge from Uganda, the secretary for native affairs of Tanganyika, and a settler from Kenya. Its remit was to investigate why the existing machinery of justice was not performing to the satisfaction of both the East African governments and the Colonial Office.[1] During the course of their investigations, which occurred between late March and early May 1933, the commissioners travelled 2,200 miles, visiting nine places. 85 witnesses testified, including four judges, two resident magistrates, three registrars, and six legal

[1] Robert Hamilton, 'Criminal Justice in East Africa. Report on the Administration of Justice in Kenya, Uganda and Tanganyika', *Journal of the African Society* 34 (1935), 7-26.

officers.[2] The Commission was primarily concerned with criminal procedure from arrest to trial, which included police investigations, confessions to police, interpreting, assessors, confirmation and revision, and circuit courts. Post-trial procedures were also investigated, which included sentencing, imprisonment, whipping, and the death penalty.[3] The Commission's report, published in 1934, set out a list of recommendations relating to criminal procedure. During the period when the commissioners were producing their report, however, the governors of the three East African territories wrote to the secretary of state for the colonies, requesting that most of the recommendations should not be implemented. Their requests were duly granted, effectively rendering the Commission's report a nullity.[4]

Although in many respects the events surrounding the Commission were a war of ideas rather than realities on the ground, they provide an excellent example of the attempts of the colonial state to manage conflicting interests, in this case those between the administration and the judiciary. As it was unable to resolve the conflict, the Colonial Office intervened and ruled in favour of the administration, even though the Commission's report ultimately favoured the judiciary. While an analysis of these events exposes the weak political position of the colonial judiciary, it also points to its important functional role. At the same time, the chapter demonstrates the emergence of a collective identity among judges as they faced repeated attacks on their role within the colonial state from members of the administration.

5.2 The Doctrine of Indirect Rule

During the 1920s and 1930s there was growing dissatisfaction in administrative circles in Kenya and Tanganyika that supervision of customary courts was technically under the control of the judiciary, even though in practice supervision was carried out by district officers. The administration also claimed that the High Courts did not have knowledge of, or interest in, customary law. Accordingly, the administration wished to gain exclusive and direct control over customary courts in

---

[2] Cmd. 4623, *Report of the Commission of Inquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika Territory in Criminal Matters* (London: HMSO, 1934), 100.
[3] Ibid., 9.
[4] H.F. Morris and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972), 318.

order to develop them according to the principles of indirect rule. The fact that they were laymen was considered to be an advantage, as they were able to guide the cases without the intrusion of legal complexities and English-trained lawyers. Administrative officers' notions of what constituted a fair trial were far removed from judicial notions; in particular, judges expected administrative officers to maintain English procedural and evidentiary law. This had evolved with the purpose of protecting the rights of the accused person, without which it was impossible to hold a fair trial as understood by lawyers.[5]

During the first years under the mandate, the government of Tanganyika was in a period of transition between the pioneer conditions of early conquest, and the 'public debate of post-war trusteeship ideology'.[6] In the 1920s, Sir Horace Byatt, the first governor, undertook a program of reforms designed to enlarge the role of chiefs within the provincial administrative system. This involved establishing native courts, promulgating native authority ordinances, and implementing a programme to secularise African education. These policies, however, were hampered by objections from various combinations of judges, administrators, and missionaries.[7]

Sir Donald Cameron was the first governor to fully endorse the new policy. The main controversy of the transformation arose as a result of Cameron's decision, adopted from Nigeria, to remove the High Court's power to review decisions from native courts, and grant that right exclusively to provincial commissioners. Cameron feared that revisions by the High Court could 'shake a native administration to its very foundations'.[8] His fears were partly based on the Byatt period, when the chief justice, Sir William Morris Carter, had regularly interfered in native policy. No such accusation, however, could be made against his successor, Sir Alison Russell, who co-operated with the government in the implementation of indirect rule. Nevertheless, he believed that the High Court's revisional jurisdiction was an important part of the doctrine on indirect rule; when these powers were removed, he

---

[5] Yash P. Ghai and J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Nairobi and New York: Oxford University Press, 1970), 143.
[6] Ralph A. Austen, 'The Official Mind of Indirect Rule: British Policy in Tanganyika, 1916-1939', in Prosser Gifford and Wm. Roger Louis (eds.) *Britain and Germany in Africa: Imperial Rivalry and Colonial Rule* (New Haven, CT and London: Yale University Press, 1967), 583.
[7] Ibid., 582.
[8] Ibid., 589.

interpreted the government's action as an 'unjustified return to a "pioneer stage of administration"'.[9] His protests and those of the unofficial members of the legislative council merely delayed the implementation of Cameron's policy and he eventually resigned over the issue.[10]

Parallels can be drawn from other parts of the Empire during the interwar period. For instance, in Malaya there was often ill feeling between Malayan Civil Service officers and members of the Legal Service, especially at state and federal headquarters. One officer who transferred from administration to law in 1938 observed that legal officers often resented the fact that

> administrators were at the top of the heap, taking precedence over everyone regardless of professional qualifications. For his part the officer whose pet schemes had to vetted by a member of the bar would understandably bridle at legalisms that frustrated his plans.[11]

Indirect rule, first applied by Frederick Lugard in Uganda and Northern Nigeria, was not merely a practical means of administration, but was also a wider, philosophical concept developed by his successors and admirers in other parts of Africa.[12] Donald Cameron, had previously served under Lugard in Nigeria and he defined the principle of indirect rule in the following terms:

> adapting for the purposes of local government the institutions which the native peoples have evolved for themselves, so that they may develop in a constitutional manner from their own past, guided and restrained by the traditions and sanctions which they have inherited (moulded or modified as they may be on the advice of the British Officers) and by the general advice and control of those officers.[13]

Cameron firmly believed he had successfully introduced a new system of administration into East Africa, although it is doubtful whether his policies were entirely new to East Africa. Lugard would certainly not have credited Cameron with having initiating the policy of indirect rule in East Africa, as he believed he had

---

[9] Austen, 'Official Mind', 589.
[10] Ibid.
[11] C.H. Witton, cited in Robert Heussler, *British Rule in Malaya: The Malayan Civil Service and its Predecessors, 1867-1942* (Oxford: Clio Press, 1981), 295.
[12] John Iliffe, *A Modern History of Tanganyika* (Cambridge: Cambridge University Press, 1979), 320.
[13] D. Cameron, Tanganyika Territory Native Administration Memoranda, No. 1: *Principles of Native Administration and their Application,* 2nd edition (Dar es Salaam, 1930), 6, cited in Morris and Reid, *Indirect Rule*, 3.

introduced it in Uganda many years before.[14] With regard to legal matters, Cameron stated in 1926 that

> [i]t is not the intention and is not the policy to impose upon the tribes a judicial system for them by ourselves and founded upon our idea of law and law courts, but to legalise and regulate the activities of whatever judicial machinery existed in the customs of the people.[15]

The doctrine of indirect rule consisted of four 'pillars': the native treasury, native authorities, native courts, and supervision of native affairs by district officers.[16] The reasons for installing traditional authority were set out in a circular issued by Cameron in 1925:

> [e]veryone, whatever his opinion may be in regard to direct or indirect rule, will agree, I think, that it is our duty to do everything in our power to develop the native on lines which will not Westernize him and turn him into a bad imitation of a European – our whole education policy is directed to that end. We want to make a good African and we will not achieve this if we destroy all the institutions, all the traditions, all the habits of the people, super-imposing upon them what we consider to be better administrative methods, better principles; destroying everything that made our administration really in touch with the customs and thoughts of the people. We must not, in fact, destroy the African atmosphere, the African mind, the whole foundation of his race, and we shall certainly do this if we sweep away all his tribal organizations, and in doing so tear up all the roots that bind him to the people from whom he has sprung.[17]

5.3 The Administration

The outlooks of administrative officers serving during this period were moulded by their background and education, and it can be argued that they promoted the spirit and practice of indirect rule as much as their superiors. The structure of the administration allowed for the development of individualistic policy in the districts

---

[14] Frederick Lugard in H.B. Thomas and R. Scott, *Uganda* (London, 1935), cited in Morris and Read, *Indirect Rule*, 3.
[15] Donald Cameron, Native Administration Memoranda, no. 11, Native Courts (Dar es Salaam, 1926), 1, cited in Anthony N. Allott, 'The Development of the East African Legal System during the Colonial Period', in D.A. Low and Alison Smith (eds.) *History of East Africa*, Vol. II. (Oxford: Clarendon, 1976), 368.
[16] R.D. Pearce, *The Evolution of British Colonial Policy towards Tropical Africa, 1938-1948*, University of Oxford, DPhil, 1978, 10.
[17] Circular No. 50 of 1925, cited in Raymond L. Buell, *The Native Problem in Africa.* Vol. I. (New York: Macmillan, 1928), 451-452.

with little interference from provincial commissioners or the secretariat. The outlook and methods of district administration were essentially paternalistic and although it was widely accepted that Africans would assume responsibility for running their own territories, no officer expected to see this materialise in his own lifetime.[18]

Unlike administrative officers in the period prior to the First World War, officers in the 1920s and 1930s began to question the wisdom of colonial officials and missionaries imposing an alien civilisation on African peoples. They also began to take a keen interest in social anthropology and in studying indigenous African culture.[19] Administrative officers tended to romanticise the tribal past and emphasised the virtues of traditional institutions such as native councils and courts. The prevailing sympathetic view of traditional African society was the foundation of the policy of indirect rule as understood in Tanganyika. Accordingly, indigenous institutions were seen as the only desirable organs though which the development of Africans might be advanced. Rather than the aspiring mission-educated urban African, the ideal became the traditional chief or elder whose authority was rooted in indigenous institutions and who administered justice according to customary law.[20]

Essentially, administrative officers sought to protect Africans from professional lawyers, who were mostly resident magistrates and judges, and they were able to do this more effectively than in the case of missionaries. They saw lawyers as being overly legalistic and as having the blind assurance that English law and practice was as appropriate in all its detail in an African society as in England.[21]

5.4 Judicial Control

After Britain assumed control of Tanganyika in 1920, appeals from native courts lay to district courts and thereafter to the High Court.[22] Cameron strongly believed that it would be detrimental to justice if the High Court interfered too closely in the appeals process of the native courts. As a consequence, he favoured the idea of

---

[18] Morris and Read, *Indirect Rule*, 11-13.
[19] This was encouraged by the Colonial Service and anthropology was included in the courses of instruction given to administrative cadets before they left for East Africa.
[20] T.P.C. Stibbs, *Aspects of the Colonial Office Administration of the Trusteeship Concept, with Special Reference to Kenya and Nigeria, 1919-1943*, University of Oxford, DPhil, 1978, iv.
[21] Morris and Read, *Indirect Rule,* 16.
[22] Kenneth Ingham, 'Tanganyika: The Mandate and Cameron, 1919-1931' in Vincent Harlow and E.M. Chilver (eds.) *History of East Africa.* Vol. II. (Oxford: Clarendon Press, 1965), 573-574.

native courts becoming an integral part of the administration, completely divorced from the High Court. This met with strong opposition from the judiciary, especially the chief justice, Sir Alison Russell. Later, when writing his memoirs, Cameron defended his position by claiming that he always intended that administrative officers would adhere to strict procedure, particularly with respect to the law of evidence.[23] In 1929, the native courts were completely divorced from the High Court and placed under the sole supervision of the administration.[24]

5.5 The Inquiry into the Administration of Justice

5.5.1 Background

By the early 1930s, public attention was drawn to the issue of the administration of justice in East Africa after several cases had led to uneasiness in the Colonial Office as to the methods of criminal procedure adopted. Chief among these was the Bagishu trial in Kenya in which four men were convicted of murder and sentenced to death.[25] The facts of the case were that the body of an African man was found on the farm of a certain Mr Oswald Bentley near Kitale in Kenya's Western Province. As a result of statements made to a European police officer, Assistant Inspector Joseph Dale, by two African constables who had been left on the farm, two employees of Mr Bentley were arrested. A further two men were subsequently arrested and all four were charged with the murder. Under Kenyan law in force at the time, police officers without a warrant from a resident magistrate were not permitted to keep suspects in custody longer than 24 hours, exclusive of the time necessary for the journey to the resident magistrate's court. The farm was only seven miles from the court, yet the men were detained for over 24 hours. This was but the first in a long series of abuses and blunders by the police. Other Africans on the farm, including a woman and child, were taken into custody and were subject to intimidation and ill-treatment by African constables under the supervision of Dale. A man employed as a tractor driver by Mr Bentley, one Busiko, was intimidated by the police into making a statement, which afterwards formed the principal basis of the charge framed

[23] Donald Cameron, *My Tanganyika Service and Some Nigeria* (London: George Allen and Unwin, 1939), 203.
[24] Native Courts Ordinance of 1929, cited in Ingham, 'Tanganyika', 574.
[25] *Bagishu Murder Trial: Report of the Commission of Inquiry* (Nairobi: Government Printer, 1931). The Bagishu are an ethnic group who inhabit the district of Kitale in the Western Province of Kenya.

against the four accused persons.[26] The case was tried by the Supreme Court of Kenya at Kitale before Judge John Stephens, and Busiko was selected as the main witness for the prosecution. Stephens convicted the four accused men of murder and sentenced them to death.[27] A key piece of the evidence was that the accused persons had killed and eaten a chicken after the alleged murder, which the court accepted as a local custom, although no evidence was led on this point; the Administration used this as an example of judiciary's incompetence.[28] The convicted persons were granted leave to appeal within a month and, as a result of Mr Bentley's efforts, it was discovered that the conviction was based on statements to police that had been obtained under duress.

A commission of inquiry chaired by the chief native commissioner, G. V. Maxwell, was set up to investigate the circumstances leading up to the trial. This led to the Colonial Office setting up a further commission under the direction of the department's legal adviser, H. Grattan Bushe, to investigate the administration of criminal justice in East Africa.[29] Sir William Dale, legal assistant in the Colonial Office described Bushe as being of 'Irish extraction, a penetrating lawyer, he hit hard at humbug and could be sarcastic, not to say cynical. [He] fought to secure for the law and for the Colonial Legal Service its rightful place in the government of the empire'.[30]

5.5.2 The Commission

The Commission consisted of five men. H. Grattan Bushe was the chairman and the remaining four members were A.D.A MacGregor, Kenya's attorney-general; C.E. Law, a puisne judge from Uganda; Phillip Mitchell, Secretary for Native Affairs in Tanganyika; and W. MacLennan Wilson, a prominent member of Kenya's settler community.[31] In their report to the Colonial Office after the investigation had been completed, the commissioners expressed their dissatisfaction with the existing framework for the administration of justice:

---

[26] *Bagishu Murder Trial: Report of the Commission of Inquiry,* 6.
[27] Ibid., 7.
[28] James S. Read, 'Indirect Rule and the Search for Justice', in John Smith (ed.) *Administering Empire: The British Colonial Service in Retrospect* (London: University of London Press, 1999), 112.
[29] Morris and Read, *Indirect Rule,* 88-96.
[30] Read, 'Indirect Rule and the Search for Justice', 113.
[31] Hamilton, 'Criminal Justice', 7-26.

> [i]t is no exaggeration to say that the machinery for the administration of justice, as apparently set up by law in these territories, does not work and as at present constituted cannot work. This is a grave statement but is fully supported by the evidence which we have heard. No machinery, however perfect it may be in itself, can perform its primary function of meting out justice to the people unless it takes justice to the people and administers it with despatch, with independence, with certainty and with skill.[32]

They identified a number of problematic areas, recognising that although there were different conditions in each territory, the main problems were common to all of them. First was the excessive jurisdiction granted to district commissioners in district courts, as well as the excessive use of this power. Second was the understaffing of the High Courts, which affected the ability of the judiciary to travel on circuit. The policy of centralising Tanganyika's judges in Dar es Salaam was also identified as a problem.[33] Apart from these two principal issues, other matters were raised by the administration, such as the argument that English criminal procedure was beyond the comprehension of accused persons, who were normally uneducated and unrepresented by counsel and could not speak English. The right of the High Courts to alter sentences passed by administrative officers was also disputed, as well as acceptable methods of punishment of Africans, in particular flogging.

In its report, the Commission recommended that all serious cases, with sentences in excess of two years, should be tried exclusively by the High Courts. Although the commissioners acknowledged that the bulk of magisterial work would have to be performed by administrative officers for a considerable time to come, they recommended that judicial work should gradually be taken over by professional magistrates.[34] The Commission rejected the suggestion that administrative officers be given enhanced powers, and recommended that additional resident magistrates and judges be appointed.[35] More specifically, they stressed that judicial work should be performed by officers who were trained in the 'weighting of evidence and the requirements of legal proof'.[36] On the other hand, the Commission acknowledged that judges were often at a disadvantage compared to administrative officers, as they

---

[32] *Report of the Commission of Inquiry into the Administration of Justice*, 51.
[33] Ibid., 9.
[34] Ibid., paras. 138-166.
[35] Ibid.
[36] Ibid.

knew little about the district where the crime was committed and often did not have opportunities to hear witnesses. Their powers of confirmation and revision, however, were judged by the commissioners to be justified given the wide jurisdiction and sentencing powers granted to district commissioners.[37]

Although a number of the Commission's recommendations were accepted by the East African governments, its broader views were unfavourably received. The governors refused to accept that the administration of justice by lay magistrates was in principle undesirable, that their powers should be reduced, and that they would eventually be superseded by professional magistrates. The recommendations that the governors disagreed with were referred to the East Africa Governors' Conference of 1934, following which the secretary of state for the colonies, Sir Phillip Cunliffe-Lister, decided in favour of the governors.[38]

Despite the fact that the wider recommendations of the report were successfully opposed by the governors, the inquiry marks a watershed in East Africa's legal history. The administration's success was a limited one and they failed to reform the judiciary in the years leading up to 1939. After the Second World War, administrative officers accepted that the doctrine of indirect rule was unsuitable, and were increasingly content to leave judicial work to professional magistrates. Once administrative officers had accepted the progressive elimination of their magisterial powers, the controversies between the judiciary and the administration receded. Moreover, as the prospect of independence became clear, many administrative officers worried the British institutions would be rapidly dismantled. Accordingly, they strongly supported the judiciary in maintaining the English legal system in its purest form as the strongest safeguard against the autocratic tendencies of the leaders of the liberation or the eroding of individual rights. After the war, English law and procedure were applied with increased rigidity, Indian laws continued to be replaced and increased attention was given to English precedent.[39]

---

[37] TNA DSA 21429/III, Secretary of State, to Governor, Kenya, 12 November 1924.
[38] The governors in question were Sir Joseph Byrne (Kenya), Sir H. MacMichael (Tanganyika), and Sir B.H. Bourdillon (Uganda). *Colonial Office List* (London: HMSO, 1934).
[39] Morris and Read, *Indirect Rule*, 102-108.

5.5.3 The Judicial Perspective

As far as the judges were concerned, the only change necessary was to increase the size of the judiciary. Sir Robert Hamilton expressed this point of view in an article published in the *Journal of the Royal African Society*:

> [t]hough the limits of a District Officer's jurisdiction are still in question, where a sufficient number of judges is not available and extended jurisdiction has consequently to be conferred upon lay magistrates, the state of affairs might not be inaptly described as one of "necessity having no law"; but is it in fact one of necessity if the difficulty can be largely overcome by the extension of the judicial staff? This is the line taken by the Report, in the course of which the old controversy as between the District Officer with knowledge of the Natives and the judge with knowledge of the law is carefully analysed.[40]

As a consequence, Kenya was assigned an extra judge, and Tanganyika's judiciary increased by two. This led to a debate about the decentralisation of the judiciary. The Commission recommended that one of the two new judges should be posted to Tanga and the Northern Province. In the opinion of the chief justice, Sir Joseph Sheridan, however, it was best if both judges were stationed in Dar es Salaam. He did not believe in decentralisation unless there were good reasons for it:

> [i]t is recognised that a High Court with some of its members stationed away from headquarters is not as strong as when all the Judges reside at headquarters, and if the circuits can be held as expeditiously and effectually by sending out Judges from Dar es Salaam, as I am satisfied they can, in the case of Tanga and Northern Province, there is no need for any decentralisation in so far as that part of the Territory is concerned.[41]

He could not accept there was sufficient work for a resident judge in the region, adding that stationing a judge in the Northern Province would necessitate the building of an expensive library. By keeping the judges at Dar es Salaam there would be no extra expense for a subordinate staff, in particular a crown counsel in Tanga. Nevertheless he conceded that the town of Mwanza, on Lake Victoria, required a permanent judge owing to its long distance from the coast. He also favoured the extension of jurisdiction of resident magistrates to 'relieve district

[40] Hamilton, 'Criminal Justice', 10.
[41] TNA DSA 21429/II, Sir Joseph Sheridan's response to the Commission's Report, 1 September 1933.

officers from their magisterial duties for their administrative duties'.[42] Sheridan's concerns echoed similar fears in other branches of the Colonial Service. For example, a report for the Committee for Colonial Agricultural, Animal Health, and Forestry Research in 1948 concluded that the isolation in which many officers served was a 'serious bar to efficiency'.[43] The report recommended a policy of grouping officers together instead of scattering them at many territorial stations.[44]

The dispute also concerned salaries, and Sheridan believed new judges should be paid the same as existing ones, and under no circumstances should a judge be paid less than a provincial commissioner, the highest rank of administrative officer. His Kenyan counterpart, Sir Jacob Barth also supported these views.[45] Judges were second in rank to the governor in both territories and the chief justice was normally the second highest paid officer. Sir Joseph was anxious to preserve the judiciary's place in this hierarchy commenting that '[h]owever erroneous it may be there is no doubt that the public judges the prestige of an office by the emoluments paid to the holder.'[46] Echoing concerns by recruitment officials in the Colonial Office, he also feared that a lesser salary than that of the present judges would not attract the best type of recruit.[47]

In connection with the exercise of the judiciary's revisionary powers, Haythorne Reed, Tanganyika's acting chief justice in the late 1920s, complained to the governor that there were a number of cases where administrative officers had broken procedural rules. He tried to uphold them wherever he could, but commented that such judgments would have been rejected in jurisdictions such as India, Zanzibar, England and South Africa.[48] The procedural errors he referred to included administrative officers submitting long reports written by themselves to their superior officers on the facts of a case as court evidence; accused persons being

---

[42] TNA DSA 21429/II, Sir Joseph Sheridan's response to the Commission's Report, 1 September 1933.
[43] Col. no. 219, 'Report by Committee for Colonial Agricultural, Animal Health, and Forestry Research', *Recommendations for the Organization of Colonial Research in Agriculture, Animal Health and Forestry* (London: HMSO, 1948), 7.
[44] Ibid.
[45] *Report of the Commission of Inquiry into the Administration of Justice*, 110.
[46] TNA DSA 21429/II, Sir Joseph Sheridan's response to the Commission's Report, 1 September 1933.
[47] TNA DSA 21429/II, Sir Joseph Sheridan's response to the Commission's Report, 1 September 1933.
[48] TNA AB 305, Haythorne Reed, Acting Chief Justice, Tanganyika to Governor, Tanganyika, 3 May 1926.

charged with previous convictions before the end of a case; accused persons being cross-examined by the court instead of merely being examined; and administrative officers incorrectly grouping charges together.[49] He stressed that '[e]veryone concerned with the administration of justice knows that when form goes, justice goes with it, and decisions are given in accordance with what the court thinks the law ought to be, instead of in concordance with what it knows the law to be'.[50] The derisory response of Sir Phillip Mitchell, the native commissioner, was couched in the following terms:

> Livingstone under his mango tree probably got a great deal nearer to the truth, and to justice, than a judge on a bench; and I wish Your Excellency could see some of the "well kept records" to which His Honour refers! But in view of an already existing divergence of opinion on the subject of Native Courts it will I think be wise not to antagonise His Honour in a matter which is peculiarly his province: though why having swallowed "Native law" (undefined of course) he should baulk at "Native Procedure" is beyond my comprehension.[51]

Mitchell believed Africans' perceptions of judges were based on their knowledge of local conditions:

> [t]he Native idea is of a kindly judge, with complete and often privately acquired knowledge of local personnel and circumstances, asking and being given corroborating information in the vernacular, and delivering judgment *coram populo* [in the presence of the people]; execution following immediately.[52]

Twelve years after the Bushe Report was published, Mark Wilson compiled a report on the administration of justice in Tanganyika in 1945.[53] This stated that the size of the judiciary had increased from two to five during the interwar period. The circuit system had also expanded, and by the end of the Second World War, the entire territory, apart from the Southern Province, was covered. The increased size of the

---

[49] TNA AB 305, Haythorne Reed, Acting Chief Justice, Tanganyika to Governor, Tanganyika, 3 May 1926; in accordance with the law of evidence, the court may only examine a witness by asking him or her straightforward questions about the facts of the case.
[50] Ibid.
[51] TNA AB 305, Phillip Mitchell, Commissioner for Native Affairs, Tanganyika to Governor, Tanganyika, 9 April 1926.
[52] TNA DSA 21429/I, Phillip Mitchell, Minute, 17 March 1932.
[53] TNA DSA 33058, 'Proposals for Post-War Developments and Improvements in the Administration of Justice in the Tanganyika Territory', 26 May 1945.

judiciary was accompanied by an increased professional magistracy.[54] In 1945, when the policy of indirect rule was beginning to be seen as outdated, he wrote of the lack of nexus between the two court systems. He reiterated the standard judicial view that the High Court should have remained the final court of appeal from the African courts. This was a reference to Donald Cameron's success in removing, in the face of fierce resistance by the judges, the right of the High Court to hear appeals from customary courts.[55]

5.5.4 The Administration's Perspective

The following paragraphs detail the views of four administrative officers in Tanganyika as expressed to their respective provincial commissioners, who then passed them on to members of the Commission. This was seen as an opportunity to air their grievances about the administration of justice in their area. To add weight to their views, administrative officers often gathered 'evidence' from Africans in their districts to support their position. For most, the overriding concern was that the powers of the High Court of Tanganyika to supervise the African courts should be removed.[56] The High Court came under more adverse criticism than any other judicial institution, and judges were widely criticised for passing sentences on accused persons in the rural areas from their headquarters in Dar es Salaam. As a result, sentences were often not handed down for long periods of time; as a result, they lost much of their value as deterrents. One person who had been persuaded by the district officer at Shinyanga to provide 'evidence' stated that Africans often asked how the 'Big Judges' could understand and weigh cases when they heard them so far away and knew nothing of the tribe or the district.[57]

One district officer compared the system of professional magistrates and judges in Tanganyika to the system that would have resulted had the Allies lost the First World War. Englishmen would have had to stand trial in London before German judges, in which the proceedings were in German, in which the judges had

[54] TNA DSA 33058, Mark Wilson, Internal Memorandum, 25 May 1945.
[55] Ibid.
[56] TNA DSA 26002, District Officer, Shinyanga, to Provincial Commissioner, Tabora, 12 February 1932.
[57] Ibid.

no knowledge of English law and customs, and the accused had no knowledge of German:

> I consider that the present system of "professional" magistrates and judges should be abandoned. The conception that because a man has passed Bar examinations and has eaten a number of dinners in one of the Inns of Court he is fit to be a Magistrate is, in my opinion, fallacious. It is a relic of the old English guild system, the modern development of which in more humble occupations is the trade union. Much more than the elemental knowledge of English law required by Bar examinations is necessary to fit a man to administer justice in native territories. A knowledge of the languages, habits, customs, and psychology of the people is necessary and this can never be acquired by sitting in Court. A knowledge of the laws which he is called upon to administer should certainly be possessed by every Government officer and Administrative Officers, whose whole functions are based on the laws, probably possess a more comprehensive familiarity with them than any other official.[58]

The severe delays between arrest and trial was one of the major issues that came before the commission.[59] For instance, the district officer in Singida reported a delay of nine months and an average of seven months in several other cases.[60] In describing a typical witness, one judge commented that

> [t]heir vague ideas as to time, their habit of mixing up what they have been told with what they have themselves, seen or heard, their vivid imaginations, and their loose manner of thought and speech all combine to mislead and mystify anyone trying to find out what really did happen.[61]

He also advised that evidence should only be taken once. Under the system at the time, however, an accused person was required to give evidence before a magistrate in a preliminary hearing, and again in the High Court.[62] Another officer wrote of an instance when a person was found dead on the side of a main road. No one reported it, fearing that they would have to appear as witnesses in the high court in Tabora, thus being forced to spend weeks away from their lands. There were even cases

[58] TNA DSA 26002, W.H. Scupham, District Officer, Mwanza, to Provincial Commissioner, Mwanza, 29 February 1932.
[59] TNA DSA 26006, District Officer, Singida, 12 March 1932.
[60] Ibid.
[61] Ibid.
[62] Ibid.

where people had attempted to conceal crimes in order to avoid the risk of being called as witnesses.[63]

An account by one of the district officers of a murder case illustrates the many disadvantages of the legal system in the early 1930s. The case was first heard in Lindi by a provincial commissioner under extended jurisdiction.[64] The crime had taken place over 100 miles away, and the witnesses, some of them so old that they had to be carried, were brought at the height of the rainy season. The two accused persons were found guilty and his finding was confirmed by the High Court. On appeal, it was discovered that a certain defence witness had not been called, and a retrial was ordered. At the retrial in Masasi, about 20 witnesses testified including the witness who was not present at the original trial, and the court came to the same conclusion, and convicted the accused. During the period between the first and second trials, however, the High Court held that the case should have been tried under the new Criminal Procedure Code instead of under the Indian Penal Code. The High Court then heard the case at Lindi almost a year after the first hearing, and acquitted the two accused persons. The judge admitted that some of the witnesses told him a completely different story to what they had told the provincial commissioner, as there were serious discrepancies. Not surprisingly, the Africans were astounded at the result.[65] The case illustrates the farcical nature of many of the cases in colonial Tanganyika. The material cost of testifying was usually enormous, as witnesses would be forced to leave their lands and wait for weeks or even months at the court while the wheels of justice gradually turned. They therefore developed evasive methods, such as avoiding crime scenes, or disappearing into the bush for the duration of the trial.[66]

---

[63] TNA DSA 26002, District Officer, Shinyanga, to Provincial Commissioner, Tabora, 12 February 1932.

[64] Extended Jurisdiction was governed by the Extended Jurisdiction Order of 1930. The High Court was able to direct that each case was heard by an 'efficient' officer. Not every officer was deemed fit to exercise extended jurisdiction, and judges were able to decide this from records kept in the High Court. TNA DSA 21429/II, Sir Joseph Sheridan's response to the Commission's Report, 1 September 1933.

[65] TNA DSA 26006, District Officer, Memorandum, Singida, 12 March 1932.

[66] Ibid.

5.5.5 Confessions

The most contentious legal dispute concerned the law relating to confessions. The Commission recommended altering the law relating to confessions in Kenya and Tanganyika to that prevailing in Uganda. Among other things, this meant that confessions made to police officers would be admissible in court, whereas the law in Kenya and Tanganyika stipulated that only confessions made to resident magistrates would be admissible. This was to increase the likelihood that such confessions would not be made under duress. Sheridan's view was that the law of evidence on the subject of confessions made to police officers should not be altered, which represented the views of the majority of judges in the region.[67]

The only judge on the Commission, C.E. Law from Uganda, requested that the section of the Indian Evidence Act excluding confessions made to police officers should be maintained.[68] Later, a judge from Kenya, John Lucie-Smith, stated that 'persuasion' in various forms was frequently applied before a suspect was asked to give a confession.[69] Similarly, in *Surumbu s/o Singana and Three Others*, the appellants were convicted of murder in the High Court of Tanganyika.[70] On appeal, Sir Joseph Sheridan concluded that the evidence on which the first two appellants were convicted could not stand.[71] As against the other two appellants, there was the evidence of their own confessions made to the local district officer. The defence submitted that this evidence was inadmissible on the grounds that the district officer was deemed to be a police officer under the statutory law then in force.[72] This section of the Indian Evidence Act rendered inadmissible any confession made to a police officer, and a series of Court of Appeal decisions had established that the words 'police officer' included district officers who were in charge of the police in their districts, provided they were acting in that capacity at the time statement were taken. In *Surumbu*, the district officer was on tour when he met the two appellants who were under arrest. He then ordered a policeman to bring them to him

---

[67] Sir Jacob Barth, Sidney Abrahams, John McDougall, and Horace Hearne agreed with Sheridan on this point.
[68] KNA AP/1/1660, Sir Joseph Sheridan to Acting Governor, Kenya, 11 June 1935.
[69] KNA AP/1/1660, Sir John Lucie-Smith, Internal Correspondence, 9 April 1943.
[70] (1940) 7 EACA 55.
[71] Webb and Francis (Uganda) concurred.
[72] Section 25 of the Indian Evidence Act and section 7 (3) of the Tanganyika Police Ordinance of 1937 cited in (1940) 7 EACA 55 at 56.

individually and he then asked each of them in turn if they wished to say anything, or give him any general information, or if they wanted to tell him about the murder and what had happened. He told the appellants that: 'I am investigating the matter. I have nothing to do with it. When I have finished I will send it to the *bwana* Judge'.[73] The Court of Appeal ruled that it was not part of the duties of a magistrate to call suspects before him with the purpose of questioning them about their movements, and that the district officer was in fact acting as an investigating officer on this occasion. The Court established the principle that district officers needed to carefully distinguish their functions, and make it plain when recording the confessions of suspects in police custody that they were not themselves taking part in the investigation and were acting as magistrates. The appeal was accordingly allowed.[74] In Wilson's experience, it was only in the tiny minority of cases that any accused person volunteered to make a confession without some form of prompting or persuasion by those holding him in custody. He disagreed with the idea that there was a widespread desire to confess.[75] There was also disagreement within the judiciary on the issue, with some willing to allow confessions to police.[76] Another complication arose from the fact that there were over 100 dialects in Tanganyika and in the majority of cases, confessions to European officers had their origins in a statement to an African police officer or interpreter acting as a medium.[77]

Rather than making broad policy statements when responding to the *Report*, judges preferred to focus on specific points. For instance, Sir Alison Russell raised the question of guilty pleas.[78] Often owing to the problems of interpreting from Swahili into English, interpreters would ask accused persons leading questions such as 'do you admit doing this?' or 'is it true that you struck him?' Accused persons would often answer '*nilikosa*', which can be translated as 'I have done wrong'. Such guilty pleas would not have been accepted in England, as it was not clear to the court whether or not the accused person had admitted to committing every element of the offence. For example, on a charge of murder, it should be clear to the court that the

[73] (1940) 7 EACA 55 at 56.
[74] (1940) 7 EACA 55 at 56.
[75] KNA AP/1/1660, Mark Wilson, Internal Correspondence, April 1943.
[76] KNA AP/1/1660, Lancelot Lloyd-Blood, Internal Correspondence, April 1943.
[77] TNA DSA 21429/II, Joseph Sheridan's Response to the Commission's Report, 1 September 1933.
[78] *Report of the Commission of Inquiry into the Administration of Justice*, para. 104.

accused person had the requisite capacity to commit the offence, that he intended to execute it, and that he had no lawful excuse. Russell referred to his *Handbook for Magistrates*, which recommended that magistrates should not accept as a plea of guilty anything that fell short of a full acknowledgement of responsibility for all the elements of an offence. In addition, the statement of the accused person was to be in his own words, rather than a simple 'yes' or 'no'.[79]

The issue of confirmation and revision was central to the debate, and the Commission recommended that all sentences of over six months' imprisonment, whippings of over 12 strokes and fines over £50 would be subject to revision and confirmation by the High Courts.[80] Administrative officers in Kenya felt these restrictions served no useful purpose and were a cause of embarrassment to the lower courts. This was mainly because judges frequently overturned verdicts and sentences passed by district commissioners.[81] Characteristically, Sir Jacob Barth believed that many district courts were staffed by unqualified people: the administration tended to appoint officers as second-class magistrates shortly after they had passed the basic Kenyan law examination. In his view, it was essential that officers were supervised by a higher authority.[82] Significantly, his opinion was supported by some Africans who testified before the Commission that the Supreme Court's intervention was helpful in pointing out mistakes and giving guidance to district commissioners.[83]

Later in the Report, Barth referred to a confirmation case in Kenya where Thomas had criticised administrative officers' insensitivity to the rights of Africans.[84] He made reference to the first volume of the Kenya Law Reports, which stated that justice in Kenya should not be administered in the 'rough and ready style of which some affect to think highly, but which is generally the sign of lack of experience or of sympathy and patience and not infrequently results in what is in reality rough and ready injustice'.[85] He claimed that administrative officers often used this style to excuse errors in the proper conduct of trials.

---

[79] *Handbook for Magistrates*, cited in *Report of the Commission of Inquiry into the Administration of Justice*, para. 104.
[80] *Report of the Commission of Inquiry into the Administration of Justice*, para. 154.
[81] Ibid.
[82] Ibid.
[83] Ibid.
[84] Ibid., para 156; Conf. Case 97 of 1933, cited in KLR, Vol. I.
[85] *Report of the Commission of Inquiry into the Administration of Justice*, para. 156.

5.6 Conclusion

After hearing evidence from both sides, the Commission decided that the legal system in East Africa was unworkable, and recommended major changes. These included reducing the judicial powers of administrative officers and transferring all se rious criminal cases to the High Courts. Accordingly, it suggested increasing the number of judges. During the period the Commission conducted its investigations, the governors of the three East African territories wrote to the secretary of state requesting that the powers of the administrative officers should be left unchanged. As a result, the Colonial Office decided to ignore many of the Bushe Report's recommendations and agreed with the governors' view that administrative officers should not be stripped of their magisterial functions. Apart from the reality that financial pressures would not allow this for many years, it was officially recognised that administrative officers had local knowledge and experience that was essential in determining such questions as motive, extenuation and credibility of evidence. Until the post-war period, the cheapest and most effective method of administering justice in rural districts would continue to be the non-professional magistrate.[86]

The differences of opinion over the essential requirements of justice were largely confined to those areas of the legal system where these two circles came into direct conflict in areas such as control of customary courts, the determination of officers' judicial powers, and the level of adherence to court procedure. Ultimately, there were two opposed views during this period. One was that Africans must be 'civilized' and integrated into a system of 'British courts'. The other held the view that Africans must be protected by the harmful consequences of contact with foreign law. The history of the courts and law during the interwar period is the history of the struggle between these two ideas.[87]

The events of the interwar years reveal the weak position of the judiciary within the colonial state. Despite the support they received regarding jurisdiction over native courts from legal advisers in the Colonial Office, the secretary of state sided with the governors of the three East African territories. As a result, East

[86] *Report of the Commission of Inquiry into the Administration of Justice*, para. 156.
[87] Anthony N. Allott, 'The Development of the East African Legal System during the Colonial Period', in D.A. Low and Alison Smith (eds.) *History of East Africa*, Vol. II. (Oxford: Clarendon Press, 1976), 368.

Africa's chief justices were unable to preserve the High Courts' revisional jurisdiction over native courts. The Commission was an attempt to resolve a legal conflict in a colonial territory from 'outside'. Its findings exposed divisions both within the Colonial Office and the colonial state. In some respects, however, the judiciary was able to claim victory. Additional judges were appointed, which enabled the judiciary to increase the number of circuits and reach more remote areas than had previously been possible. The High Courts retained their powers of revision, confirmation and appeal in respect of the resident magistrates' courts, and after the Second World War, the animosity between the two branches largely disappeared as the administration became increasingly willing to leave judicial matters to professional magistrates. The chapter highlights the important functional role of the judges with regard to the administration of justice, but also reveals their weak political role and influence.

CHAPTER SIX

TRANSIENT JUSTICE

6.1 Introduction

This chapter offers a new vantage point from which to view Tanganyika's legal system by looking at the day-to-day experiences of two colonial judges, Gilchrist Alexander and Sir Mark Wilson. The overwhelming number of studies on the Colonial Service are centred on administrative officers, and emphasise the importance of the district commissioner, the 'man on the spot', who served at the 'interface' of the encounter between coloniser and colonised. By using judicial biographies, this chapter suggests a new line of inquiry into the nature of colonial power in order to offer a view from 'inside' the colonial modernising project, and expose its fissiparous nature. Both judges were stationed in Dar es Salaam, but ventured periodically into the interior on circuit in order to 'administer justice to the people'. This brought them into contact with a wide range of historical actors: district commissioners; prosecutors; witnesses; assessors; interpreters; and English, Scottish, South African and Indian advocates. The chapter demonstrates how this form of transient justice brought these actors together in a unique way that transcended the complex web of delineations that divided them outside the courtroom.

In an attempt to offer a general impression of what life as a judge was like, this chapter discusses aspects of the judicial experience in Tanganyika. An examination of their personal experiences provides a perspective of the judges' identities, which includes their perceptions of themselves and their social location within colonial society. As discussed in earlier chapters, judges were aware of their distinctive identity within the Colonial Service and were anxious to maintain a separation between themselves and members of other branches. Their relationship was often founded on the 'old controversy' between the district officer with knowledge of the Africans, and the judge with knowledge of the law. An account of judicial circuits reveals a particular kind of colonial encounter: where judges displayed their adjudicative power in different ways, and before diverse audiences. They mostly travelled by rail and steamboat, holding criminal and civil sessions for a

few days before moving on to the next court. They were also anxious to maintain a sense of exclusivity in their dress and choice of accommodation, in order to separate themselves from Africans as well as from members of the district administration. By focussing on a little-known aspect of colonial control, the paper reveals a unique set of dynamics between Africans, district officers and transient judges on circuit in Tanganyika, and calls for a re-appraisal of the judiciary's role within the colonial state.

6.2 The Sources

The immediate attraction of biography is twofold. First, it appeals to one's curiosity about human personality; second, it aims to satisfy the search for factual knowledge.[1] Ian Donaldson has observed that,

> [s]ocial historians themselves are beginning increasingly to discover how much can be learnt about an entire society, a wider historical moment, through following with close attention the trajectory of a single life, a single family, a small group of individuals whose lives, though seemingly unusual, are also in some sense exemplary.[2]

It is the wider historical moment - the social history - that explains individual points in time of a person's life. Biography, therefore, offers the balance of the individual with society and culture.[3] The biographer who aims at completeness seeks to find actions and patterns of behaviour that will contribute to a consistent explanation of the overall life of his subject.[4] He does not simply narrate but also interprets. In order to do so, he is required to select evidence in order to interpret.[5] Regarding the use of evidence, Paul Thompson has asserted that the passage of time is of principal concern for historians. As a result, the distinction between mass survey and individual life history is less significant. In addition, he felt that historians are not methodological purists: given a problem they seize on any evidence available and

---

[1] Alan Shelson, *Biography* (London: Methuen, 1977), 3.
[2] Ian Donaldson, 'Matters of Life and Death: The Return of Biography', *Australian Book Review* 287 (2006), 28-29, cited in Susan Magarey, 'Three Questions for Biographers: Public or Private? Individual or Society? Truth or Beauty?', *Journal of Historical Biography* 4 (2008), 11.
[3] Ibid., 15.
[4] Shelson, *Biography*, 13.
[5] Ibid.

make the best of it. This often meant working with 'patchy and biased' evidence.[6] In his study of two colonial clerks in French West Africa, Ralph Austen acknowledged that however unrepresentative their autobiographies may have been, they at least provide a voice to the otherwise silent presence of most clerks in most colonial documentation.[7] Finally, biography imposes a condition: it must be based on facts that can be verified by people other than the writer.[8] The work of the biographer is invaluable, as readers cannot live wholly in the intense world of the imagination. According to Virginia Woolf, sober fact and 'authentic information' make good biography. The skilled biographer is 'creative' and 'fertile' in handling fact; he is also adept at sifting the little from the big; at the same time he shapes the whole in order to perceive the outline.[9]

Anthony Kirk-Greene has collated an impressive list of biographies, autobiographies, memoirs, colonial service documents and secondary works relating to the Colonial Service.[10] Tellingly, while he listed 111 biographies relating to the Administrative Service, he only noted five works that concern the colonial judiciary. Similarly, of the 81 secondary sources listed, none dealt specifically with the Legal Service. One of the judges in this study, Gilchrist Alexander, left four autobiographies: the first details his training in London, his call to the Bar and his early years in legal practice[11]; the second recounts his early legal career as a magistrate, attorney-general and judge in the Pacific[12]; the third describes the six years he spent in Tanganyika[13]; and the fourth volume discusses his life after he had

---

[6] Paul Thompson, 'Life Histories and the Analysis of Social Change', in Daniel Bertaux (ed.) *Biography and Society: The Life History Approach in the Social Sciences* (London and Beverly Hills, CA: Sage, 1981), 290.
[7] Ralph A. Austen, 'Interpreters Self-Interpreted: The Autobiographies of Two Colonial Clerks', in Benjamin N. Lawrance, Emily Lynne Osborn and Richard L. Roberts (eds.) *Interpreters, Intermediaries and Clerks: African Employees in the Making of Colonial Africa* (Madison, WI: University of Wisconsin Press, 2006), 159.
[8] Virginia Woolf, 'The Art of Biography', in William H. Davenport and Ben Siegel (eds.) *Biography Past and Present: Selections and Critical Essays* (New York: Charles Scribner's Sons, 1965), 168.
[9] Ibid., 170-171.
[10] Anthony Kirk-Greene, *On Crown Service: Britain's Imperial Administrators, 1858-1966* (London: Macmillan, 2000). This category of primary material includes biographies, autobiographies and memoirs. Of the five works listed relating to the Legal Service, only two were concerned with East Africa, see pp. 130-149. The majority of secondary accounts are concerned with the Administrative Service, a good example being Charles C. Trench, *Men Who Ruled Kenya: The Kenya Administration, 1892-1963* (London and New York: Radcliffe Press, 1993).
[11] Gilchrist G. Alexander, *Temple of the Nineties* (London: William Hodge, 1938).
[12] Alexander, *From the Middle Temple to the South Seas* (London: John Murray, 1927).
[13] Alexander, *Tanganyika Memories: A Judge in the Red Kanzu* (London and Glasgow: Blackie and Son, 1936).

left the Legal Service.[14] In this chapter these works have been supplemented by cases published in the *Tanganyika Law Reports*. Many of Mark Wilson's field notes on circuit are stored in Rhodes House, Oxford. Like Alexander, some of his judgments are recorded in the *Tanganyika Law Reports*; the Tanzania National Archives and Kenya National Archives also house some of his correspondence.

6.3 *Curricula Vitae*

Alexander was born in Glasgow in 1871 and died in 1958. He attended the Glasgow Academy before reading philosophy at the University of Glasgow. He excelled at university, not only graduating with first class honours in 1893, but was the most distinguished graduate in arts in his year. He then moved to London and joined the Middle Temple as a student barrister, and was called to the Bar in 1896. He subsequently completed pupillage and remained in practice until 1907.[15] Between 1907 and 1920, apart from a two year period of war service, he served in Fiji as a colonial officer and was progressively promoted from position of chief police magistrate of Fiji, to attorney-general and finally to chief justice. He then served as a puisne judge in Tanganyika from 1920 until his retirement in 1925.[16]

Mark Wilson was born in 1896 in County Kilkenny, Ireland. He was educated at Kilkenny College and Mountjoy School in Dublin before reading history and political science at Trinity College Dublin. Like Alexander, Wilson excelled at university and was a gold medalist in his honours examinations in history. He proceeded to read law, graduating with an LLB in 1922. After graduation he joined the society of the King's Inns in Dublin, and was called to the Irish Bar with first class honours in 1924. Surprisingly, Wilson chose to join the Administrative Service immediately after Call. He was posted to Tanganyika and arrived in the territory in 1924. He transferred to the Legal Service two years later and was sent to Uganda to take up an appointment as a resident magistrate. He was promoted to the rank of senior magistrate in 1935. Between 1934 and 1936 he acted as the chancellor of the Anglican Diocese of Uganda. In this capacity, he was judge of the consistory court, which dealt with requests to carry out repairs or extensions to

[14] Alexander, *After Court Hours* (London: Blackwell, 1950).
[15] *Who was Who*.
[16] Alexander, *Tanganyika Memories*, 8.

churches. In 1936 he was posted to Tanganyika as a puisne judge, where he remained until 1948. He was 40 years old at the time of his appointment, which earned him the distinction of being the youngest judge in the entire Legal Service at the time.[17] Famously, Wilson served as commissioner of the Arusha-Moshi Lands Commission between 1946 and 1947.[18] Thereafter, he was transferred to the Gold Coast as chief justice in 1948, where he served until his death in 1956. He was knighted in 1950.[19]

6.4 Early Days in Tanganyika

6.4.1 Dar es Salaam

In Alexander's third autobiography, *Tanganyika Memories: A Judge in the Red Kanzu*, he describes his first impressions of the newly-created High Court, which opened on 3 January 1921, and was staffed by himself and the chief justice, Sir William Morris Carter.[20] The High Court was an existing building near the harbour that had been adapted for use by the Public Works Department. It consisted of a courtroom with an elevated bench and electric fans; an upper floor with separate chambers for each judge; rooms for the law officers, who included the attorney-general, solicitor-general and crown counsel; and, importantly for the judges, a library.[21]

As was typical, the first judicial and legal staff to serve in Tanganyika had been posted from a wide variety of colonies: Morris Carter from Uganda; Alexander from the Pacific; the attorney-general from Trinidad; and the five resident magistrates from Mauritius, British Honduras and Jamaica.[22] Sessions were held year-round in Dar es Salaam except for the Easter and Christmas vacations, which lasted approximately a month and two weeks respectively. Each morning a rickshaw arrived at Alexander's front door, the 'brasswork shining and the wheels clean and

---

[17] Telephone interview, Anthony Wilson, 28 April 2010.
[18] See Thomas Spear, *Mountain Farmers: Moral Economics of Land and Development in Arusha and Meru* (Oxford: James Currey, 1997).
[19] *Who was Who* and *Tanganyika Staff Lists* (Dar es Salaam, Government Printer).
[20] Law Reports of the High Court of Tanganyika and the Court of Appeal for Eastern Africa, 1921-52. Vol. I. (Revised) (Dar es Salaam: Government Printer, 1955), v; William Morris Carter began his overseas service as a registrar and later magistrate in the East African Protectorate. He was transferred to Uganda in 1903 where he served as a judge for 17 years, eight of those as chief justice. *Who was Who.*
[21] Alexander, *Tanganyika Memories*, 25.
[22] Ibid., 9.

free from dust.'[23] Although the courthouse was only a few hundred yards from his house, walking the short distance in the heat was enough to cause him to perspire. As it was 'undesirable to sit under a fan [in court] in a heated state' he always travelled by rickshaw.[24]

His first task was to assist the chief justice in drafting court rules, a task he resented. He felt the Colonial Office were not in search of men likely to make capable and independent judges. Rather, their first aim was to recruit efficient draftsmen to draft ordinances, rules and regulations that would need little revision by the legal department at the Colonial Office. From this perspective, the successful judge was not one who was necessarily familiar with court work who would try cases fairly, but the 'helpful' man who could use his drafting skills for many different purposes.[25] During his time in Fiji, most of the chief justice's attention was taken up with drafting King's regulations for the Western Pacific Commission or advising the high commissioner on points of law. He referred to a similar situation in Britain, where a bill proposed that the government would be given power to obtain opinions from judges on hypothetical questions of law. The law lords strongly opposed the bill and it was withdrawn. As a result, Alexander believed that lawyers in Britain gained an insight, possibly for the first time, into how colonial judges were viewed by their respective administrations.[26]

6.4.2 Judges' Robes

Adjoining the courtrooms in the Dar es Salaam High Court were the judges' robing rooms, the Bar robing room, and offices for the registrar and his deputy.
Both the judges and the advocates adhered to the custom of robing in wig and gown. Alexander maintained that in spite of the intense heat, 'there was little discomfort about the practice, which added to the impressiveness and dignity of the court.'[27] In his view, with doors and windows wide open and fans overhead, conditions were reasonably comfortable.

Judges in Tanganyika wore scarlet robes when hearing criminal cases and black

[23] Alexander, *Tanganyika Memories*, 170.
[24] Ibid.
[25] Ibid.,19.
[26] Ibid., 20.
[27] Ibid., 26.

robes when they presided over civil matters. The robes were identical to those worn in England except that the ermine was replaced by dark brown silk. A judge carried a black cap in his hand on ceremonial occasions, which he wore on his head when handing down a death sentence. Its purpose was to demonstrate the majesty of the law in its most 'impressive and ceremonial form'.[28]

Wigs were a fashion in headdress that was once universal for gentlemen in Britain. Towards the end of the eighteenth century it was eventually given up by all of them except judges, barristers and bishops, the latter giving them up in 1832.[29] The wearing of wigs and gowns often has the effect of isolating judges from litigants and accused persons by suggesting, falsely, that the law is a mystical process that cannot possibly understood by those not trained in the law.[30] Judicial dress also makes witnesses ill at ease in the 'theatrical' and alien atmosphere of the court, thus hampering the effectiveness of the judicial process. Wigs and gowns and other aspects of legal ceremony encourage 'legal pomposity' and imply that judges are not subject to normal standards of assessment and criticism. One of virtues of judicial dress is that it symbolises the anonymity of both the judge and the barristers, highlighting the importance of the impartiality of the Bench and of equality between lawyers. Ultimately, however, the wearing of wigs and gowns 'epitomize[s] all the defects of English law, its remoteness, its uncritical reverence for tradition, its absence of rationality, and its inability to see obstacles in the way of the understanding of the legal system by laymen'.[31]

In the colonies, judicial dress was often far more important to judges than to their British counterparts. Robes and wigs became an integral part of their identity as representatives of British justice. There were even occasions when judges, unsure of the correct attire for particular events, wrote to the Colonial Office requesting advice on sartorial matters. One example is a request from John Whyatt, Singapore's chief justice in the 1930s who later became Kenya's attorney-general, who wished to know how a judge 'acquire[d] his knowledge of which robes to wear

---

[28] Alexander, *Tanganyika Memories*, 27.
[29] David Pannick, *Judges* (Oxford: Oxford University Press, 1987), 146; Colonial judges were not permitted to preside over courts bareheaded, in terms of the *Court Regalia (Overseas Territories) Regulations*. Ronnie Knox Mawer, *Tales From a Palm Court* (Oxford: Isis, 1986), 214.
[30] Pannick, *Judges*, 143.
[31] Ibid., 147.

in the many pageants of which he is the central figure'.[32] He noted that he 'was always trying to inculcate into my In-patriate brethren the customs and traditions of the English Judiciary'.[33] He wondered whether there were any official publications on the matter, such as a small volume entitled 'What every Judge Should Know' that was given to junior judges.[34] The Colonial Office had no record of the book he referred to, and simply sent him a robing list published by Ede and Ravenscroft.[35]

Similarly, over 20 years later, Sir Herbert Cox, Tanganyika's chief justice between 1952 and 1956, wrote to the Colonial Office requesting advice on the proper dress to be worn by colonial judges on six different official occasions: the Queen's Birthday Parade; the presentation of insignia following decorations awarded by the Queen; Armistice Day celebrations; the opening of the Annual Sessions of the Legislative Council; the swearing-in of the governor; and the swearing-in of the chief justice.[36] Sir Sidney Abrahams, a legal assistant at the Colonial Office who had served as Tanganyika's chief justice himself, was unsure of how to handle the request. After some enquiries it was confirmed there was nothing in the Colonial Office's archives to indicate that there were any guidelines setting out what robes were suitable at functions held outside court in the colonies. Abrahams's advice was simply to follow judicial practice in Britain.[37] Accordingly, he enclosed a copy of the Judges' Robing List, as well as extracts from a pamphlet published in 1937 entitled 'Dress and Insignia Worn at Court'.[38]

6.4.3 Revision

Much of Alexander's time outside court was spent inspecting case records, a process known as revision. Some cases were sent in automatically in accordance with statutory law; others were called for by the judges after the inspection of monthly returns. The purpose of the system was to avoid gross injustice and ensure the

---

[32] TNA: PRO LCO 2/6697, John Whyatt to Sir Kenneth Roberts-Wray, 13 April 1937.
[33] Ibid.
[34] Ibid.
[35] TNA: PRO LCO 2/6697, R.C.L. Gregory to A.R. Rushford, 30 April 1957.
[36] TNA: PRO LCO 2/6697, Herbert Cox to Secretary, Lord Chamberlain's Office, Dispatch, 20 May 1954.
[37] TNA: PRO LCO 2/6697, Sir Sidney Abrahams to George T. Coldstream, 26 May 1954.
[38] TNA: PRO LCO 2/6697, George T. Coldstream to Sir Sidney Abrahams, Memorandum, 6 June 1954.

adoption of a uniform attitude and scale of punishments.[39] Wilson also believed that the safeguard of confirmation and revision was often more useful than the right of appeal.[40] He mentioned the sound judgement of certain individuals, which was largely a matter of 'temperament and inherent capacity'.[41] In other words, he believed that '[t]raining and experience might modify tendencies to impulsive decision, but, by themselves, they did not seem to give the sanity of outlook which some quite junior officers possessed.'[42] He knew of many instances where cases had failed under revision, after being subjected to 'skilled analysis' by judges.[43] Alexander wrote that administrative officers were often placed in the position of both prosecutor and judge, a predicament that could only be resolved through the appointment of judges.[44] Wilson wrote later that copies of all adverse decisions on appeal or revision, as well as inspection comments by judges, were filed in the 'personal record' file of administrative officers for future reference.[45] The chief justice also kept a 'black book' wherein he noted flagrant errors made by individual magistrates, and he reported to the governor annually on all cadets and district commissioners before their 'efficiency bars' were assessed.[46]

6.4.4. Interpreters

Alexander was responsible for supervising a staff of clerks and interpreters, mostly Goans, who were described by Alexander as 'painstaking and industrious', to handle the large number of documents necessitated by the revision system.[47] In court, he made special mention of a 'first-class' interpreter from Zanzibar known as Samuel Chiponde:

> I can still see Samuel Chiponde, clad in a spotless white *kanzu*, gazing benevolently over his gold spectacles on the timid witness, reassuring him in a fatherly way, and then in faultless English putting before the Court a faithful rendering of the witness's evidence. A reliable interpreter like him, known

[39] Alexander, *Tanganyika Memories*, 25.
[40] RHL Mss.Afr.s.592, Wilson Papers, 8/2, 173.
[41] Alexander, *Tanganyika Memories*, 25.
[42] Ibid.
[43] Ibid., 206.
[44] Ibid.
[45] RHL Mss.Afr.s.592, Wilson Papers, 8/2, 11.
[46] Ibid., 173
[47] Alexander, *Tanganyika Memories*, 22.

> and trusted over the whole East coast, was a 'god-send' to the judges. They could concentrate on the points of evidence as they came before them and give their undivided attention to the issues they had to try.[48]

Alexander strongly believed that the judge or magistrate who prided himself on his knowledge of local languages was more likely to cause injustice than monoglots like himself. He complained that in the course of his revision work, he repeatedly found that magistrates had misstated the evidence. In his view, district commissioners were sometimes so intent on obtaining a true rendering of the evidence in the local vernacular or Swahili, that the weighing of evidence itself became secondary.[49]

By contrast, Wilson had taken a Swahili examination during his period in Tanganyika as an administrative officer between 1924 and 1926. In the annual *Staff Lists* published by the respective colonial governments, the qualifications of colonial officers were stated alongside their names. Along with their degrees and professional qualifications, the lists indicated whether or not officers had passed the higher standard or lower standard Swahili examinations.

In Wilson's case, the 1937 list indicates that he had passed the lower standard examination; he was the only one out of five judges in Tanganyika who had written the paper. Bertram Roberts, who joined Wilson on the Bench in 1939, had also passed the lower standard course. Lancelot Lloyd-Blood, who had previously passed the lower standard course in Kenya, was appointed as a puisne judge in Tanganyika in 1940. This meant that three out of the five Tanganyikan judges had passed the examination. Of the seven resident magistrates in 1937, three had taken the examination, two of them at the higher level. By 1945, however, of the six resident magistrates, only Gerald Mahon, who went on to serve as a judge between 1949 and 1959, had passed lower standard Swahili.[50]

6.4.5 The Special Tribunal

In accordance with her obligations as trustee of a mandated territory, Britain created a separate court to deal with civil claims that arose prior to 1920 known as the Special Tribunal.[51] Most of the 'genuine' cases were disposed of fairly quickly. As

---

[48] Alexander, *Tanganyika Memories*, 22.
[49] Ibid., 23.
[50] *Tanganyika Staff Lists*; *Who was Who*.
[51] Alexander, *Tanganyika Memories*, 26.

the period of limitation drew nearer, however, a large number of cases with little chance of success were filed, which Alexander described as a 'great fluttering of the dovecoats' among the lawyers.[52] This was partly because many advocates had waited until the last moment to decide whether or not their cases, often complicated financial commercial matters, were worth the costs involved. In the event, many of these cases were unsuccessful.[53] A typical case heard by Alexander in the Tribunal involved a merchant at Kilwa who had sued for the balance of an account that had accrued during the war.[54] The original debt was incurred in 1916 and the claim was made in 1923, a total of seven years. The period of prescription[55] had been suspended for the duration of the war and the defendants successfully argued that the claim had prescribed under the German Civil Code, which stated that all claims prescribed after two years.[56] If the plaintiff had filed his plaint within two years of the ending of the war, he would have been successful.[57] Once the work of the Special Tribunal had been completed, judges mainly applied English law and virtually no further references to German law are recorded in Tanganyika's law reports.

6.5 Circuit Courts

6.5.1 The Central Railway

Circuit courts in Tanganyika were staged in the same provincial centres where German district judges had presided over tribunals, as they lay on the same railway routes. Accordingly, criminal sessions were held 'at regular intervals' at Morogoro, Dodoma, Tabora, Kigoma and Mwanza on the Central Railway; at Tanga, Lushoto, Moshi and Arusha on the Northern Railway; and at Iringa 'when required'.[58] In 1930, district registries of the High Court were established at Arusha, Tanga and Mwanza.[59] Judges were required to attend sessions at four or five courts over periods

---

[52] Alexander, *Tanganyika Memories*. In English law a period of limitation is a specified period beyond which a party to a civil dispute may not institute legal proceedings against the other party.
[53] Ibid.
[54] *Mahomed Visram v Rajabali Rawji and Co.* (1923) 1 TLR (R) 711.
[55] The legal term for when the period of limitation has expired.
[56] (1923) 1 TLR (R) 711.
[57] (1923) 1 TLR (R) 711 at 712.
[58] Alexander, *Tanganyika Memories*, 51.
[59] Ibid.; Initially, there was a single High Court registry for the entire territory. As caseloads increased, it became necessary to station deputy registrars on a permanent basis in the larger centres. District registrars and resident magistrates some shared certain functions. For example, the resident magistrates of Arusha and Moshi wrote to each other in 1938 discussing issues such as the complexity

lasting up to a month. Efficiency was of paramount concern and, accordingly, they were instructed by the chief justice to adhere as closely to their published itineraries as possible. Cases committed for trial after the opening date of a circuit were re-directed to Dar es Salaam.[60]

After about three months Gilchrist went, as acting chief justice, on the first British judicial circuit in Tanganyika. He visited the towns of Morogoro, Dodoma, Tabora and Kigoma on the Central Railway.[61] He recorded a detailed description of life aboard the train:

> [t]he Judge's coach was soon loaded with all the impedimenta required for the three weeks' absence. His coach was to be his home, and in it were piled his beds, blankets, pillows, mosquito nets, pots, pans, dishes, dusters, towels, hurricane lamps, candles, with eatables and drinkables, boxes of groceries and personal belongings. It contained a saloon with two couches, available for beds, folding tables and shelves and underneath a cage in which live fowls could be carried. Between the kitchen and saloon was a bathroom with shower bath complete. At each end of the coach railed platforms permitted the passengers in the cool of the evening to sit in the open, except when smuts from the engine made such a procedure inadvisable. This little home on wheels could be attached to any train – mail train, water-train, or mixed train proceeding along the line – and be detached and placed in any siding.[62]

Throughout the account, he placed great emphasis on the importance of judicial dress and ceremony. He contrasted this with the fact that the Germans had dispensed justice as part of the ordinary administration of government, with judges dressed in the ordinary uniforms of German officers.[63] As a result, the whole conception of the pomp and majesty of the law was absent. Judges on circuit often lived in greater comfort in their purpose-built railway coaches than the district commissioners they visited. For instance, the railway company provided excellent meals for the judges at most stations. If the district station was some distance from

---

of cases, how long they were likely to take to resolve in court, and how many prosecution witnesses would be involved. RHL Mss.Afr.s.592, 1/1, Resident Magistrate, Arusha to Resident Magistrate, Moshi, Telegram, 4 May 1938.

[60] RHL Mss.Afr.s.592, G.M. Mahon, Resident Magistrate, to District Officer, Korogwe, 3 May 1938, 59.

[61] Alexander, *Tanganyika Memories*, 34.

[62] Ibid., 37; this was not Alexander's first circuit, although his previous experience had been markedly different: during his time in the Pacific he described a circuit in the South Seas when legal officers moved around the various islands by government yacht. Advocates accompanied the chief justice, the attorney-general, the registrar, and interpreters. As part of their preparation, lawn tennis was played ashore before the trials began. Alexander, *Middle Temple*, 126.

[63] Alexander, *Tanganyika Memories*, 35.

the rail station, the district commissioner would often arrange for a car to collect the judge.[64]

Decorum remained important to judges in both Kenya and Tanganyika throughout the colonial period. For example, a circular issued by the Kenyan secretariat in 1947 set out the procedure for opening the assizes at 'out-stations.'[65] In one instance, a customary guard of honour mustered outside the courthouse a few minutes before the sessions were set to begin. The judge, fully clothed, saluted and inspected the guard before proceeding into the courthouse. Together with the judge and two assessors, the district commissioner was given a seat on the Bench. The circuit was officially opened once the first case was called and the plea recorded. The court then adjourned and the judge 'took leave' of the administrative officer in the judge's chambers.[66]

Occasionally, however, the correct protocol was not followed, much to the consternation of the judges. For example, Ransley Thacker[67] reported from Kisii in 1947 that the district commissioner did not take part in the guard of honour in accordance with instructions from the chief justice.[68] He also complained that there had been no official call from any administrative officer even though the rooms he occupied in the court building were adjacent to the administrative officers' quarters. The next day a district commissioner invited him for a drink. He felt, however, that he was unable to accept the invitation as up to that moment no official had deemed it necessary to call upon him.[69]

Returning to Alexander's account of his first circuit, he recorded that at Dodoma,

---

[64] Telephone interview, Anthony Wilson, 28 April 2010; the railway company was known as the East African Railways and Harbours Corporation.
[65] KNA AP/1/1636/III, Secretariat Circular, 8 August 1947; assizes refer to courts which formerly sat at intervals in each county of England and Wales to administer civil and criminal law. Similar courts were in operation in Kenya and Tanganyika throughout the colonial period.
[66] KNA AP/1/1636/III, Secretariat Circular, 8 August 1947.
[67] In 1952, at the end of his career, Thacker gained notoriety for convicting Jomo Kenyatta, leader of the Kenya African Union who went on to become the country's first president, and five others of being members of the Mau Mau movement, which had been declared illegal by the colonial government. He sentenced all six men to seven years' imprisonment in Lodwar, a remote part of the colony. Carl G. Rosberg, and John Nottingham, *The Myth of "Mau Mau": Nationalism in Kenya* (New York: Praeger, 1966), 281-285.
[68] KNA AP/1/1636/III, Barclay Nihill to Colonial Secretary, 8 August 1947.
[69] Ibid.

> [c]hiefs and people were agog to witness the advent of the High Court. Never before had they seen in their midst a British judge…All stood to their feet at once, and there on the topmost steps leading down to the yard stood the "Red Judge", the *bwana* judge in the red *kanzu* as he came to be called, his scarlet robes striking a powerful note of colour in the blazing sunshine, his white wig and bands adding the touch of the mediaeval which the British courts alone preserve. To say that the native community were impressed would be to understate the case. Not a whisper was to be heard as the judge slowly descended the steps and made his way into the court, and it was with looks of awe that the simple native followed his progress.[70]

He even claimed that a prisoner in England complained when his case was tried by a judge dressed in black instead of red.[71] In another account of one of his appearances he wrote that

> [t]o their delight and approval the judge appeared *en grande tenue,* his scarlet robes dominating the landscape with vivid splashes of colour, his full-bottomed wig, lace ruffles, silk stockings, and silver buckles completing a picture as they had never seen before. *"Bwana mkubwa sana",* shouted the little boys - "a big chief indeed" - while their elders, in the fashion of the district, made the air ring with prolonged clapping of hands, in unison and with hollowed palms.[72]

He strongly believed in maintaining the law in all its majesty among Africans, in order to demonstrate that crimes tried by the judge in the red *kanzu* were regarded by the colonial government as being particularly serious. He believed, however, that apart from seeing how seriously the High Court regarded certain crimes:

> [t]hey also learned to know that the High Court was prepared to listen to them freely. It was not an autocratic body to whose decrees they should submit blindly and in silence without opening their mouths. Oppression is a feature so strange to British mentality that, too often, we fail to realize how familiar it may be to an African native and how sustained and continuous must be the efforts to teach him that it plays no part in the British conception of civilization.[73]

In Dodoma, between 20 and 30 cases usually were set down for trial. Alexander wrote that day after day 'simple tales' were told to him.[74] These would typically

---

[70] Alexander, *Tanganyika Memories*, 49-50; *Kanzu* is the Swahili term for a long, usually white, men's garment with long sleeves.
[71] Ibid., 50.
[72] Ibid., 59.
[73] Ibid., 60.
[74] Ibid., 51.

involve beer drinking, fighting, and deaths as a result of spear wounds. He lamented the relative absence of long 'firm swindles, company-promoting cases [and] stock exchange frauds', but only cases relating to offences such as murder, rape, culpable homicide and robbery. Instead, the bulk of his time on circuit was taken up with 'primitive and elemental offences' – mainly murder, culpable homicide and robbery – as well as rape and perjury.[75]

Wilson held similar views as many of the cases he heard were alcohol-related. As a result, many judges automatically assumed that alcohol had played a role in the commission of various offences. In Bukoba in 1945, for instance, prosecution witnesses claimed that the only person who had drunk alcohol was the deceased.[76] Wilson wryly stated, however, that he found it 'quite impossible to credit the inhabitants of this corner of the Territory with such angelic restraint'.[77]

Criminal proceedings in cases began with intervention by a headman followed by a preliminary inquiry before a magistrate.[78] The case was then committed to the High Court and finally the accused and witnesses undertook the long journey to the nearest circuit court, some journeys lasting up to ten days. Murder and culpable homicide cases were normally straightforward, while arson and perjury were more difficult. In cases of arson, often a neighbour was blamed simply because he was unpopular rather than because there was sufficient evidence against him. In perjury cases, young district commissioners sometimes accepted the statement of one of the witnesses but charged another for perjury if he had a different story.[79] Furthermore, not content with convicting the accused, district commissioners then instituted criminal proceedings against the accused person's chief witness. In such matters, the High Court judge was required to 'hammer away at the evidence for hours on end' in order to uncover the truth.[80] In this regard Alexander claimed that nothing surprised Africans more than the elaborate examination of evidence that took place in the High Court. By contrast, he got the impression that in courts under German

---

[75] Alexander, *Tanganyika Memories*, 51.
[76] *R v Ntahokagiye bin Tombwa*, No. 109 of 1945, cited in Mss.Afr.s.592, 1/1, 50.
[77] Ibid.
[78] Preliminary hearings were conducted after the prosecution had filed a criminal complaint, in order for the district magistrate or resident magistrate to decide whether or not there was enough evidence to proceed with a trial.
[79] Alexander, *Tanganyika Memories*, 59.
[80] Ibid., 60.

rule as well as in contemporary native courts, justice was short and summary. Apart from seeing how seriously the High Court regarded certain crimes, Africans also learned that the High Court was prepared to listen to them freely. It was not an autocratic body to whose decrees they should submit blindly and in silence without opening their mouths. In his view, oppression was a feature so strange to British mentality that, too often, judges failed to realise how familiar it was to Africans. As a consequence, he believed it incumbent on judges to teach Africans that it played no part in the British conception of civilisation.[81]

6.5.2 'The Old Controversy'

Perhaps the most striking aspect of Alexander's memoirs is the amount of time he devoted to the theme of conflict between the judiciary and the administration with regard to the administration of justice. Many of the district commissioners in the formative period of British rule in Tanganyika had been posted to the territory during the First World War as soldiers. After Britain assumed control of large areas of the territory in 1916, soldiers were appointed as political officers in rural areas for the remainder of the war.[82] For this reason, he expressed little but contempt for their professed legal prowess. Furthermore, the first governor of the territory, Sir Horace Byatt, had previously served in Somaliland, a territory where

> …the legal fraternity did not appear to have penetrated. In that favoured region justice seems to have been administered without any of that tiresome regard for precedent, rule or authority which is the bane of more advanced communities. The true bureaucrat, though fertile in the formulation of rules and regulations for executive action, is intolerant of any interpretation of the rules which may conflict with the purposes of the executive. Judges and lawyers have an unhappy knack of construing rules according to their proper intent and meaning, and of seeing that effect is given to that meaning irrespective of consequences. To frame a rule and then to ignore it, if its consequences be inconvenient, is a matter of everyday occurrence for the autocrat, especially if he be placed in a position to give speedy effect to the framing of new rules and the suppression of such regulations as may have been found defective. In its rudimentary form administration in our remote possessions gives the executive wide powers. As it becomes more advanced and more complex, administration becomes more stable and less fluid, and the power of amendment less easy. Laws become more rigid. Interpretation

[81] Alexander, *Tanganyika Memories*, 60.
[82] Ibid., 9.

becomes less easy and conflicts of powers more possible and frequent.[83]

Evidently, Alexander considered the average governor to have a very narrow interpretation of the administration of justice. Although he conceded that most district commissioners had a 'working knowledge' of criminal law and practice and statutory law, he wrote that

> …it hardly enters their heads that a knowledge of criminal or statutory law forms but a small part of the equipment required by the successful judge or magistrate. The profession of the law, like that of medicine, is a highly technical one. No Governor would think of consulting, as a medical man, a practitioner who had passed some theoretical examinations in medicine, but had never handled any actual cases in practice. Yet over and over again a Governor will recommend for a legal appointment, some youth who, having never handled a case in court in his life, has succeeded, merely by passing an examination, in tacking the mystic words 'barrister-at-law' to his name.[84]

He was grateful that the legal department at the Colonial Office supported the judges against the 'popular "new despotism" favoured by most colonial governors'.[85] In particular, he praised the legal adviser, Sir H. Grattan Bushe, for combating this trend.[86] Although Alexander retired in 1925, eight years before the Bushe Commission began its investigations, the book was published in 1936, two years after the Commission had published its findings, and he emphasised his support for the Commission's recommendations.

The two aspects of indirect rule that were most disagreeable to Alexander were that capital offences were within the jurisdiction of native courts, and that accused persons were often not entitled to a legal defence.[87] He expressed his frustration in the following terms:

> Why should the natives in a mandated territory for which we are responsible be cut from recourse to the courts of the experienced judges who have been appointed with the sole end of assisting them by their experience?... We are told that the object of the Government is to make the natives "Good Africans". They are to have the best medical attention: they are to be trained in the best methods of agriculture. But when it comes to justice, they are to

[83] Alexander, *Tanganyika Memories*, 16-17.
[84] Ibid., 18.
[85] Ibid.
[86] Ibid.; Cmd. 4623, *Report of the Commission of Inquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika Territory in Criminal Matters* (London: HMSO, 1934).
[87] Alexander, *Tanganyika Memories*, 200.

> be left to the mercy of nominal chiefs. It is idle to say that the supervision of the administrative officers will be completely effective.[88]

His aim was to safeguard the rights of the people, and he claimed that administrative officers did not have the temperament, time, or judicial knowledge to review cases.[89] He also referred to the advanced methods of British justice, in particular the rules of evidence, which he believed was the most effective means of ascertaining the truth as opposed to the 'barbarous, irrational and prejudiced methods of raw native races'.[90] By contrast, methods of justice in Britain were 'humanised' and judges brought with them the 'humane and advanced practices of the courts at home'.[91] Finally, he recognised that from the administration's perspective, it was easier not to have a separation of powers, but in compromising the judiciary's authority, the rights of individuals were sacrificed.[92]

Wilson expressed similar views in a review of Donald Cameron's autobiography, *My Tanganyika Service and Some Nigeria*.[93] Like Alexander, he was a strong supporter of the British constitution, and the rule of law. He stressed the 'evil effects' of any attempted subordination of the judiciary to the executive. In his view, the two fundamental benefits of British administration were the

> …protection of [Africans'] rights under a known code of law, administered in open courts without fear or favour, affection or ill-will, by judges and magistrates interpreting the law as they find it, in accordance with well-known and settled legal principles and without regard, in deciding cases between the governors and the governed, for what is called "administrative convenience".[94]

He also sought to justify the judiciary's role in the legal system, particularly with regard to circuits. He placed on record the fact that every officer he had spoken to had 'welcomed the regular incursion of the High Court into that part of the country, which in the past it has visited only sporadically and infrequently'.[95]

---

[88] Alexander, *Tanganyika Memories*, 204.
[89] Ibid.
[90] Ibid., 205.
[91] Ibid.
[92] Ibid.
[93] Donald Cameron, *My Tanganyika Service and Some Nigeria* (London: George Allen and Unwin, 1939); RHL Mss.Afr.s.592, Wilson Papers, 8/1, 43-48.
[94] Ibid., 46.
[95] RHL Mss.Afr.s.592, 1/1, 59, Memorandum to Registrar, 20 July 1938.

In his papers, he included a letter from a district commissioner in Lindi, G. A. Mitchell, who described himself as an 'amateur magistrate endeavouring to administer justice' and had previously been offered legal advice by Wilson. Mitchell had recently moved from Kilwa and referred to a case where an Indian had been charged with murder. He had conducted the preliminary inquiry, had visited the accused person and was aware of local popular opinion on the matter. A recent circular from the chief justice, however, stated that district commissioners were obliged to submit a written report to the High Court on the character of the accused, his possible motives and local popular opinion after the preliminary enquiry but before trial. He felt these issues ought to be raised during the trial itself. He expected a reprimand from 'Headquarters', but he found it difficult to 'obey an order as an Administrative Officer which one feels is unjust as a Magistrate'.[96] On the one hand, Mitchell's understanding of the law led him to believe that the specified information should remain confidential until the accused had been tried. On the other, he was instructed by a circular from the chief justice to disclose that information before trial. Unfortunately Wilson's reply is not recorded but the letter illustrates the kinds of legal problems district commissioners faced. It also confirms the somewhat counterintuitive fact that some of them approached High Court judges for legal advice.

6.5.3 Living Conditions on Circuit

In Tanga, Alexander was accommodated in a disused house in poor repair:

> [w]ithin the bare walls of this dwelling-place [a judge] had to make himself as comfortable as circumstances would permit. I cannot say the outlook was at all cheerful when, probably in pouring rain, one climbed a mouldy staircase and was ushered along a dark passage into dusty rooms containing not a stick of furniture. At Moshi station I remember being given rooms reminiscent of the back "lands" of Edinburgh or Glasgow. At Tabora, on one occasion, my boys, under the direction of my wife, had to clean out, not only the rooms, but the filth left by the previous occupants. Such, however, were the trials of the judicial department – a body which the executive seemed to delight in belittling. The oft-quoted dictum that the white man must maintain his prestige in the eyes of the native did not seem to apply in the opinion of East African governors.[97]

[96] RHL Mss.Afr.s.592, 1/1, 2-3, G.A Mitchell to Wilson, 10 May 1938.
[97] Alexander, *Tanganyika Memories*, 76.

Wilson expected courthouses to be equipped with robing rooms as well as places to write his judgments. On one occasion he complained about the robing room at the Musoma courthouse:

> [s]mall robing room attached to court has no ceiling and no furniture except a camp table and one chair. Ordinary amenities of a robing room like pegs to hang robes on, a washstand and mirror are entirely absent. Any writing has to be done in Court owing to lack of furniture and ceiling in robing room.[98]

He also complained that the Musoma Club accommodation was unsuitable for the judge owing to the crowdedness of the Club especially at weekends.[99] On the same circuit in 1936, he described the accommodation at Bukoba as 'small but adequate', as the assistant district commissioner's office adjoining the room could be used as a robing room and judicial chambers.[100]

An earlier account by Sir Samuel Thomas, who served in Kenya between 1929 and 1933, is notable for its reference to his memories of his time as a young barrister on the Midlands and Oxford circuit in 1914:

> [t]he hotels when available are not always quiet and sometimes the Judge has to endure a restless night to the accompaniment of the noise associated with a dance as a fitting preparation for an important murder trial. This is in marked contrast to the stopping of the bells ringing in a town like Stafford in England, during the circuit of the Judges.[101]

Like Wilson, Ransley Thacker, who served as a judge in Kenya between 1938 and 1952 complained that there was seldom a private sitting room for a circuit judge, even though much of the judge's work of an assize had to be performed outside the court. Consequently, the judge's consideration of the day's proceedings, references to the law made, and judgments and orders, written were almost always done in a hotel or club after the court's offices had closed.[102]

Judges were also concerned about preserving the maxim that justice must not

---

[98] RHL Mss.Afr.s.592, 1/1, 1, Wilson, Circuit Notes, Musoma, November 1936,
[99] Ibid.
[100] Ibid., 3.
[101] *Commission of Inquiry into the Administration of Justice*, Samuel J. Thomas, Memorandum, Nairobi, 5 April 1933.
[102] KNA AP/1/1636/III, Registrar to Colonial Secretary, 7 July 1947.

only be done but must seem to be done. In 1944, Wilson endorsed the views of his fellow judges, Bertram McRoberts, Lancelot Lloyd-Blood and William Stuart, that it was unsuitable to lodge the circuit judge and prosecuting counsel in the same building: '[i]t is likely to give an entirely false impression to laymen as to how justice is administered. The African, especially, is already far too prone to get the erroneous idea that the Judiciary is part of the "Serikiali"'.[103] Similarly, in 1951, Kenneth O'Connor, Kenya's chief justice, agreed with the general judicial view that it was inadvisable for judges to stay with district commissioners while on circuit. He had no objection to judges residing with resident magistrates, though it was preferable for them to stay in hotels.[104]

6.6 The Northern Circuit

6.6.1 Civil Law

On the Central Railway, almost all the cases heard by Alexander were criminal. On the Northern Circuit, however, there were a large number of civil cases, many of them heard in the Special Tribunal. In Tanga, for example, Indian traders sued on promissory notes. Greeks, who had taken over German sisal[105] farms, brought complicated financial matters for resolution. Local banks that had financed coffee plantations in the Kilimanjaro district sought to enforce their rights. There was also the occasional Swahili land case.[106] More than 12 years after his arrival in Tanganyika, Wilson reported that Tanga had retained its reputation as the circuit town with the most civil matters.[107]

An example of a typical circuit he undertook on the Northern Circuit began in 31 August 1937, when he travelled by steamer from Dar es Salaam to Tanga.[108] In Tanga, he heard a single criminal session case; three original civil matters; two probate and administration matters; one bankruptcy case; and one criminal revision matter. In Arusha, he heard five criminal session cases, one criminal appeal, and one

---

[103] RHL Mss.Afr.s.592, 1/5, 94, Wilson, Circuit Notes, Musoma, 15 February 1944; 'Serikiali' is a reference to the colonial government.
[104] KNA AP/1/1890, Sir Kenneth O'Connor to C. Hooper, 8 October 1955.
[105] A plant of Mexican origin that is cultivated for the production of fibre, which is mostly used for ropes and matting.
[106] Alexander, *Tanganyika Memories*, 74.
[107] RHL Mss.Afr.s.592, 1/1, 33.
[108] RHL Mss.Afr.s.592, 1/1, 37, Wilson, Circuit Notes, Musoma, September 1939.

original civil matter. In Moshi, he heard three criminal sessions, two original civil matters and one criminal appeal. Finally, in Korogwe, he heard five criminal cases before returning to Dar es Salaam in 22 September.[109]

For Alexander, the test of a judge's knowledge and skill lay in civil law, and he was convinced the proper route to the Bench was through the Bar, stating that '[o]nly those who have been through the mill should be chosen'.[110] Alexander wrote with reference to the experiences of colonial judges in other parts of the world, which supports the idea that the Legal Service was, in the words of Benedict Anderson, an empire-wide 'imagined community'.[111] Although the environments in which they dispensed justice were vastly different, they were united by their professionalism and English law. He noted that in Britain's Asia, such as Singapore and Hong Kong, commercial traders were anxious to have judges with sound professional experience and training in civil law. He also observed that the government of Western Australia had begun a policy of appointing judges directly from the English Bar, in order to address the large backlog of complicated civil matters that colonial judges were struggling to deal with. Within the Legal Service, however, he regretted that throughout the Empire and contrary to stated policy, promotions were generally made on the basis of general legal experience in the colonies, rather than aptitude for civil law. In his view, this negatively impacted on commerce.[112]

Many colonial judges claimed to have considerable professional and practical experience of law, but few had served in commercial centres. He also complained about the distribution of judges around the Empire. For example, an acquaintance whom he considered to be the best lawyer in the Legal Service at the time, was posted to a minor post in the West Indies rather than to a major commercial centre. Furthermore, his appointment was made at a time when territories in the East were in great need of judges with experience of civil cases.[113]

In Tanganyika, he pointed to miscarriages of justice where lay magistrates had handled civil matters. For example, the government of Tanganyika had appointed

---

[109] RHL Mss.Afr.s.592, 1/1, 33.
[110] Alexander, *Tanganyika Memories*, 20.
[111] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006), 6.
[112] Alexander, *Tanganyika Memories*, 20.
[113] Ibid.

an administrative officer to conduct an inquiry. The facts of the case were that a claim had been made against the government for salvage rendered to the government steamer. In Alexander's view, a professional lawyer would have resolved the issue immediately as he would have known the vessel was a King's ship. Consequently, no claim could be made but an *ex gratia* payment should be paid.[114] Instead, there were lengthy arbitration proceedings that involved substantial travelling costs and legal fees, which resulted in the government paying between £1,500 and £2,000 to settle the matter.[115]

6.6.2 Case Notes

One of the principal aims of the Bushe Commission was to improve the circuit system by reducing the period of time accused persons and witnesses were detained at local centres. A letter from the district commissioner at Musoma to the provincial commissioner in Mwanza in 1942 reveals that the situation in some districts was still unacceptable. The letter stated that in one case, the accused and 12 witnesses had been held since May of that year. In another case, 17 witnesses had been bound for the same period. Eight prisoners had been incarcerated for between four and nine months, and one had attempted suicide.[116]

Caseloads steadily increased from the late 1930s onwards, and by 1946 Tanganyika's judges heard between 300 and 400 cases on circuit each year.[117] For example, in an average year approximately 25 cases were heard on the Lake Circuit. In 1945, however, Wilson recorded that he had heard 51 cases, a record for any circuit in Tanganyika. 32 of those cases were homicides, 20 of them arising directly or indirectly out of the excessive consumption of alcohol. Witchcraft cases were fewer than normal, and three cases were concerned with the unlawful possession of diamonds. In Bukoba, five of the 13 cases concerned arson. At the conclusion of the circuit, Wilson and his crown counsel proceeded directly to Tabora to begin the

---

[114] An *ex gratia* payment is one made from a sense of moral obligation rather than because of any legal requirement.
[115] Alexander, *Tanganyika Memories*, 21.
[116] RHL Mss.Afr.s.592, 1/1, 42, District Commission, Musoma to Provincial Commissioner, Mwanza, 2 October, 1942.
[117] RHL Mss.Afr.s.592, 2, Wilson to Registrar, 28 March 1946.

Central Railway Circuit, without returning to Dar es Salaam. This proved to be a short circuit with only 14 cases.[118]

Wilson displayed sensitivity regarding problems facing assessors and witnesses who were summoned to court. In his papers he recalled his attempts to obtain information about what times of the year would be most suitable and least disturbing for witnesses and assessors. He recognised that most Africans in rural districts were occupied with sowing and harvesting operations for most of the seven months of the year when travel by road was most feasible.[119]

Wilson's typed notes of a typical case from Bukoba on Lake Victoria record that in 1945 two men attacked a hawker in town and stole his basket containing about 150 dried fish.[120] At the trial, medical evidence was tendered that violence was used to steal the fish, although there was conflicting evidence with regard to the facts. Wilson ironically noted that 'disregard for the truth' had become the rule rather than the exception in the Bukoba district, despite the fact that most of the population professed to be Christians. He concluded that one thing was certain: all the parties (including the prosecution witnesses) were 'well on in liquor' on the night of the crime.[121]

He also drafted death reports, which were sent to the governor after an appellant's appeal against the death penalty had failed. They were intended to assist the governor in making the decision to recommend that the sentence be reduced. In one instance, the appellant had killed his father in the genuine belief that his father had, through the invocation of evil spirits, caused the death of two of his children and was about to cause the death of the third. In dismissing the appeal, the Court of Appeal held that his reaction was unreasonable and he had no recourse to the defence of provocation, which might have reduced the offence to manslaughter. In his report, Wilson referred to the widespread belief in witchcraft, and the manner and characteristics of the condemned man.[122]

Some files consist of personal notes plus typed judgments. In his handwritten

---

[118] RHL Mss.Afr.s.592, 2, Registrar, Dar es Salaam, 'Circuit Jottings', 13 April 1945.
[119] RHL Mss.Afr.s.592, 1/1, 53-59, Wilson, Memorandum, 29 July 1938.
[120] *R v Bartholomayo alias Kyakazire and Another* (Criminal Sessions No. 250 of 1945), cited in RHL Mss.Afr.s.592, 2.
[121] Ibid.
[122] RHL Mss.Afr.s.592, 2, *R v Kajuna s/o Mbake* (Criminal Sessions case No. 201 of 1945.

notes, Wilson wrote a short paragraph of about 80 words or so for each case; each page contained three or four cases.[123] The facts of each case were written in black ink, and references to the law were written in red ink.[124] The outcome of cases were marked by letters written in red or blue crayon. For example, if a verdict of guilt was handed down, he wrote a large circled 'G' over the facts of the case. 'NG' denoted 'not guilty', 'A' indicated an acquittal, 'M' signified a murder conviction, 'MS' stood for a conviction of manslaughter, and 'NP' denoted '*nolle prosequi.*'[125] Often, especially in simple murder cases, the only law he referred to in his written judgments was the Tanganyika Penal Code, with no mention of case law, East African or otherwise. In more complex matters, he cited English cases and also made references to legal texts which he carried on circuit.[126]

6.7 Conclusion

Alexander was the model recruit for the Legal Service: an outstanding student who had relatively long experience at the Bar in London. The manner of his recruitment was also typical of the years preceding the First World War: legal qualifications and professional experience were paramount and interviews were merely a formality. He had virtually no knowledge of the Empire and was selected purely on the basis of his credentials.[127] Wilson, on the other hand, was an unusual candidate for the Legal Service. Despite excelling as a law student, he chose not to pursue a career in law and joined the Administrative Service in order to begin a colonial career as soon as he could. He would have had a far greater awareness of the Empire and wished to play a part in its civilising mission. He was also a religious man, serving as chancellor of the Uganda diocese. Like most judges, Alexander arrived in Tanganyika on transfer from another territory outside Africa. Wilson, by contrast, spent his entire career in Africa, gradually working his way from administrative cadet in Tanganyika

---

[123] RHL Mss.Afr.s.592, 1/1, 9.
[124] RHL Mss.Afr.s.592, 1/1, 40-41, M. Wilson to Acting Governor, 11 October 1937.
[125] A formal notice of the abandonment of a case by a prosecutor.
[126] RHL Mss.Afr.s.592, 1/1, 4-7.
[127] John M. MacKenzie has recorded that during much of colonial rule, the 'British public never came to grips with the principles or practice of imperial rule. They knew little or nothing of specific territories or of their administrative, "native" or economic affairs…' More widely, he expressed this insular outlook as a 'generalised imperialism rather than any sophisticated concept of Empire…' John MacKenzie, 'Introduction', in John MacKenzie (ed.) *Imperialism and Popular Culture* (Manchester: Manchester University Press, 1986), 8-9.

to chief justice of the Gold Coast. Further differences became apparent on circuit. When interacting with Africans, Wilson displayed the experience, empathy and wisdom of his years in Africa, while Alexander struggled to adapt to African conditions. An example of this can be seen in Wilson's attitudes towards African languages that contrasted sharply with those of Alexander who relied exclusively on the skills of interpreters. There was much that united them, however, and both placed great importance on their judicial status. This was maintained through wearing court dress, observing proper decorum at outstations and being accommodated in lodgings deemed fit for judges. This was confirmation of a common judicial identity that separated them from the colonial environment as well as from other colonial officers. The most significant similarity between the two accounts, however, is the emphasis placed on the familiar interwar theme of ideological conflict between the administration and the judiciary.

CHAPTER SEVEN

THE ADVOCATES' PERSPECTIVE

7.1 Introduction

This chapter describes the relationship between advocates and judges in late-colonial Kenya. The overwhelming majority of both groups of men were called to the Bar in London. As a result, they often tried to emulate the atmosphere of the four Inns of Court and the Royal Courts of Justice, particularly the unique relationship that existed between barristers and judges in Britain. For instance, through their restrictive and persuasive arguments in court, British barristers made a significant contribution to the outcomes of cases. In addition, judgments were often the end product of a complex series of exchanges between Bar and Bench and between judges themselves.[1] The chapter explores the complex issues that arose as a result of attempts to import a professional legal structure, developed in a country based on racial equality, into Kenya, a colonial territory that depended on racial division for its survival.

Despite Kenya's deeply segregated society, lawyers and judges were able to interact in a social space where there was mutual respect, and lawyers were treated as professionals regardless of their racial origin. Although there were undeniable racial undertones between the European judges and lawyers, and the Asian advocates, these did not necessarily detract from the principles of professionalism and decorum, and lawyers of both races would often socialise with each other and with the judges. Importantly, casterism existed amongst Asians, as members of certain castes who had become successful in business and industry would often only hire lawyers from their among their own kin to handle lucrative civil matters.

Through an analysis of lawyers, the chapter also reveals differences between the colonial state in East and West Africa. By the 1950s, the legal profession in West Africa was dominated by Africans. This was the result of a longstanding colonial policy of encouraging aspirant African lawyers to undertake legal training. By contrast, in Kenya's settler society, the profession was firmly under the control of Europeans throughout the colonial period, although by the 1950s Asian lawyers had

[1] Alan Paterson, *The Law Lords* (London: Macmillan, 1982), 7.

become numerically superior. Opportunities for Africans to study law were limited with the result that there was only a handful of African lawyers in Kenya prior to independence.

This chapter also outlines the development of the Bar in Kenya, with a particular focus on qualifications and training. A discussion of Asian and European late colonial society leads into a number of sections which focus on courtroom encounters between advocates and judges, based on empirical research conducted in Nairobi in 2007 and 2008. One legal institution is examined through the eyes of another, with the aim of providing a more nuanced picture of colonial Kenya's legal fraternity. As far as their competence is concerned, colonial judges and lawyers have rarely been scrutinised, as high standards of legal knowledge and academic achievement are generally taken for granted. Through the analysis of courtroom encounters, the chapter also investigates judges' attitudes, both towards their wider role in Kenya and the exercise of their powers in everyday cases.

7.2 The Kenyan Bar, c. 1900 to 1963

7.2.1 Historical Background

Within a short period after the establishment of a 'British' court in Mombasa in 1897, a number of lawyers from England and Ireland were granted practising certificates. In many of the colonies, the principal client of the legal profession was government bureaucracies. In Kenya, however, the large settler and Indian populations were a source of considerable private legal work. The majority of Indians arrived as labourers and traders, but many became entrepreneurs and professionals in East Africa and came to dominate the legal profession by the 1950s.

During the interwar period, the administration sought to protect Africans from professional lawyers, and they were able to do this more effectively than in the case of missionaries. They saw lawyers as being overly legalistic, and as having the blind assurance that English law and practice was as appropriate in all its detail in an African society as in England.[2] During the post-war period, however, many administrative officers accepted that the doctrine of indirect rule had gone out of fashion and were increasingly content to leave judicial work to professional

[2] H.F. Morris and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972), 3, 16.

magistrates and advocates. Once administrative officers had accepted the progressive elimination of their magisterial powers, many of the controversies between the judiciary and the administration receded. Moreover, as the prospect of independence became clear, many administrative officers worried that British institutions would be rapidly dismantled. They responded by strongly supporting the judiciary in maintaining the English legal system in its purest form, as the strongest safeguard against the perceived autocratic tendencies of the leaders of the liberation. English law and procedure were applied with increased rigidity, and increased attention was given to English precedent.[3]

The lack of contact with customary law in Kenya's courts as opposed to West Africa's courts was due to a combination of factors. First, colonial administration in most parts of West Africa was much older than in the East. Second, advocates in East Africa were prohibited from appearing in African courts, while lawyers in West Africa were permitted to appear in magistrates' courts. Social, political, economic and educational development was also more advanced in West Africa; this meant that the legal profession became very attractive in West Africa, with African lawyers taking more of an interest in customary law than their European counterparts. By contrast, the legal profession in East Africa was almost entirely non-African before independence. Most significantly, however, appeals from African courts in Kenya lay to administrative tribunals rather than the Supreme Court for most of the colonial period, with the result that, unlike West Africa, customary law was hardly referred to in the superior courts.

Following the promulgation of the Law Society of Kenya Act and the Advocates Act in 1949, a professional legal organisation was finally established with full powers of self-regulation.[4] The Law Society's role in vetting aspirant lawyers was enhanced, and an applicant applying to be enrolled as an advocate was first interviewed by the Law Society. The Society then forwarded a report on the applicant to the chief justice, who was then to admit him, unless he had reason to believe he was not a fit and proper person to practise law. In practice, the power of admittance was exercised by the Law Society, as chief justices rarely departed from

[3] Morris and Read, *Indirect Rule*, 102-108.
[4] Amos O. Odenyo, 'Professionalization amidst Change: The Case of the Emerging Legal Profession in Kenya', *African Studies Review* 22, no. 3 (1979), 33-44.

its recommendations. On being enrolled, advocates were required to obtain an annual practising certificate from the registrar. Though in some respects the two Acts only confirmed what had been the practice for many years, their effect was to give a measure of self-government and power to the Bar, greatly in advance of anything it had previously possessed.[5]

By the start of the 1950s, the size of both the judiciary and the advocates' profession had grown significantly. The Law Society achieved self-regulating status in 1954, with far wider powers, including the disbarment of its members. Asian lawyers were the most numerous, followed by Europeans who dominated the prestigious firms in Nairobi and enjoyed the lion's share of commercial work. Most of the Asian firms were far smaller, typically comprising one or two lawyers, and handled a disproportionate amount of criminal cases, owing to the fact that the more lucrative commercial work was given to the large European firms.

7.2.1 Barristers, Solicitors and Advocates: 'Divided' and 'Fused' Bars

In England, the training of a solicitor involved compulsory law school attendance, passing a number of legal examinations and serving a period of articles of clerkship with a practising solicitor. The period of articles was five years in the case of those who had not taken a university degree, and two and a half in the case of those who had. By contrast, it was possible to qualify as a barrister in three years without a degree. Until 1959, newly-qualified barristers could then practise in England and elsewhere without serving a year-long pupillage with a practising barrister, although this was rare. After this date, pupillage became a requirement for practice in England. Up to independence in the African colonies, the primary qualifications for enrolment as an advocate was call to the Bar or admission as a solicitor in England, Scotland or Ireland. In West Africa, call to the Bar was the sole qualification, while in East Africa the legal qualifications of other Commonwealth countries were also recognised. There were virtually no African lawyers in East Africa by the 1950s, compared to West Africa where there were a considerable number: about 800 in Nigeria and 200-300 in Ghana. With hardly an exception, all lawyers in the colonies

[5] Yash P. Ghai and J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framwork of Government from Colonial Times to the Present* (London and Nairobi: Oxford University Press, 1970), 387.

were called to the English Bar, which was easier, quicker and cheaper than qualifying as solicitors, and virtually all returned to serve pupillage in their home territories. After the Second World War, the number of overseas student swelled dramatically eventually outnumbering English students.[6]

The private legal profession in Kenya was fused, as advocates performed the functions of both barristers and solicitors. The rules governing the profession, however, were drawn increasingly from the rules governing solicitors in England, even though the vast majority of the advocates had qualified as barristers in London. Their work tended to lie in the field of private law and when they did branch into public law it was in the role of defence counsel. Further amendments to the Advocates Act went some way towards introducing the two-counsel rule into Kenya's fused legal profession by providing that Queen's Counsel were not to perform the functions of solicitors.[7] In England, barristers never performed the functions of solicitors, but in Kenya, most lawyers who had been called to the Bar acted as solicitors, something they would not have been able to do in England as the qualification primarily prepared them for court advocacy.

7.3 The Asian Community

Colonial Kenyan society was made up of a number of economic divisions based on race that were supported by stereotypes and myths. These ideas helped to maintain a social distance between Europeans and Asians after the latter had unsuccessfully attempted to preserve their rights to own rural land and be represented on the legislative council in proportion to their significant numbers in Kenya.[8] Although Indians occupied a middle space in the racial hierarchy, by the 1940s the settlers were able to persuade the colonial government to limit Asian rights and representation, and to tolerate what amounted to *de facto* apartheid.[9] A policy of segregating schools fostered further conservatism and introversion, both religious and

---

[6] L.C.B. Gower, *Independent Africa: The Challenge to the Legal Profession* (Cambridge, MA: Harvard University Press, 1967), 106-108.
[7] Ghai and McAuslan, *Public Law*, 387.
[8] Elizabeth Hopkins, 'Racial Minorities in British East Africa', in Stanley Diamond and Fred G. Burke (eds.) *The Transformation of East Africa* (New York and London: Basic Books, 1967), 83-153.
[9] Anthony Clayton and Donald C. Savage, *Government and Labour in Kenya, 1895-1963* (London: Frank Cass and Company, 1974); Roger M.A. van Zwanenberg, *Colonial Capitalism and Labour in Kenya, 1919-1939* (Nairobi: East African Literature Bureau, 1975).

ideological, among the Asian community,. More important is the scarcely acknowledged fact (by Asians themselves and various scholars) that Asians developed their own strong stereotypes of, and prejudices against, Africans. While this was partly based on the European example, and partly on the 'strong if subtle colour-consciousness of the Indian caste system', these attitudes must at least be partly explained by their role in the 'pecking-order': their insecurity about African competition being rather like that of the 'poor whites' in South Africa. Although some Asians promoted radical political policies against the colonial government, the prevailing mood seems to have been one of quiescence or tacit support of colonial policy, even during the period of the anti-colonial independence movement in India.[10]

Although the restrictive and segregationist policies were resented by Asian professionals, they were generally found to be uncomfortable rather than repressive. In other words, these policies did not hinder their professional freedom to such an extent that they could not carry out their day-to-day activities. Asians were the most urban population group in Kenya and by 1962, 85 per cent lived in the five largest towns.[11] This was largely due to restrictive laws under which Asians were effectively precluded from owning land and trading outside certain areas and townships. This had important implications for their social organisation. As there were no indigenous urban communities (a feature of East African historical geography that contrasted sharply with West Africa), they played a major role in creating Kenya's towns. This physical concentration and introverted network of economic activity limited their interaction with other races. This led to much of the disliked 'clannishness' which was normally regarded as 'typically Indian'.[12] The reputation of Kenya's Asians has often rested on the conduct of the trading sector, and merchants were commonly regarded as dishonest and exploitative. Some of the alleged practices included overcharging, giving under-weight, rudeness and making speculative gains. Many of these traders worked long hours, kept large and diverse amounts of stock and operated on low margins, and neither Europeans nor Africans could compete.[13]

In a 1969 study, Vincent Cable examined why East Africa's Asians appeared to

[10] Vincent Cable, 'The Asians of Kenya', *African Affairs* 68 (1969), 222.
[11] *Kenya: Census of Population, 1962* (Nairobi: Government Press, 1964), cited in ibid., 221-222.
[12] Ibid., 221.
[13] Ibid.

be so communalistic and exclusive in their social behaviour. He identified the racial segregation imposed on Asians by the British and a continuation of the conservatism of traditional India as being particularly important factors in shaping these practices. There was also the paradox of a high degree of technical skill, economic success and exposure to British education, co-existing with the 'old taboos of religion and caste and firm loyalties to extensive networks of kin'.[14] In the Manpower Plan of 1964-1970, it was shown that Asians occupied 16 per cent of grades A and B (professional and semi-professional jobs) with Europeans contributing 26 per cent and Africans 58 per cent. In grade C (skilled workers and clerks) Asians held 40 per cent of the posts, Europeans 15 per cent and Africans 46 per cent. There were virtually no Asians or Europeans in the unskilled sector. In 1964, within the professional and semi-professional category, the Asians constituted the largest group in both the legal and medical professions.[15]

One of the interviewees provided a rare insight into class discrimination within the Asian community, a subject seldom discussed by lawyers. As he was born into a small, poor caste, he decided to practice only criminal law as a way of breaking through what he referred to as a 'class ceiling'.[16] Certain families within the Asian community dominated areas of commercial practice, and they seldom hired lawyers from other castes. He knew that he would struggle to get work from the large family-run commercial businesses, and correctly judged that once he had established a reputation as a good criminal lawyer, clients from all classes would hire him.[17]

7.4 Settler Attitudes

Community spirit between colonials was fostered through their collective attitudes and behaviour, which often went beyond affiliations within the judiciary. Some of these attitudes were expressions of a group culture of whiteness, which bound people together through shared allegiance to various aspects of British culture. Colonial behaviour often conformed to certain conventions. These were expressed in the way

---

[14] Cable, 'Asians of Kenya', 218.
[15] *High-Level Manpower: Requirements and Resources, 1964-1970*, Ministry of Economic Planning (Nairobi: Government Press, 1965), cited in ibid., 220.
[16] Certain advocates wished to remain anonymous. Consequently, a numbering system is used in this thesis. This quotation was taken from an interview with Anonymous Informant no. 3 in Mombasa on 29 April 2008.
[17] Ibid.

judges related to the advocates, litigants and accused persons who appeared before them. There were also accepted modes of conduct between judges, and they often shared similar recreational interests. Most importantly, all colonial officers were bound together by their skin colour, which identified them as members of the ruling class with a dominant role in official colonial life. Unlike the Indian Civil Service, all Colonial Officers had to be British either by birth or naturalisation. Justification for the debarment of Africans was often given in general terms. For example, it was felt that Africans did not have the character for effective public service, they had no written culture, and their societies were too dissimilar to British society. Until the point that Africans were trained in British models of governance, they were barred from participating in the administration of justice, except at a very low level. In contrast with West Africa, where there was a less rigid demarcation between Africans and Europeans, there was very little racial intermingling between the races in Kenya before the Second World War.[18]

Unfortunately, only the advocates' lists for 1932, 1936, 1937 and 1938 survive in the Kenya National Archives. They provide comprehensive detail about each advocate, including their full name, qualification, firm name and town. An analysis of the list for 1938 gives some idea of the composition of the Bar just before the Second World War:

Table 7.1: Composition of European Lawyers in Kenya (1938)[19]

Barr. (England)	**Sol. (England)**	**Barr. (Ireland)**	**Sol. (Ireland)**	**Sol. (Scotland)**	**Adv. (SA)**	**Sol. (SA)**	**Total**
7	16	4	2	4	1	10	44

Table 7.2: Composition of Asian Lawyers in Kenya (1938)

Barristers (England)	**Advocates (Bombay)**	**Advocates (Lahore)**	**Total**
20	6	1	27

[18] Anna Crozier, *Practising Colonial Medicine: The Colonial Medical Service in British East Africa* (London and New York: I.B. Taurus, 2007), 124-5.
[19] The following abbreviations refer to barristers, solicitors, advocates and South Africa respectively: barr., sol., adv. and SA.

Table 7.1 indicates that 32 out of the 44 European lawyers in Kenya were solicitors, a proportion that changed dramatically after the war. The long period of training required to qualify as a solicitor meant that all of these lawyers were English. Later on, Europeans born in Kenya usually chose to be called to the Bar and then return to Kenya, as it was cheaper and quicker than qualifying as a solicitor, even though the qualification was more suitable for much of the work advocates performed. All the Asians were either barristers or advocates. The table shows their preference for training in England, rather than returning to India.

Table 7.3: European Law Firms (1938)

	Firm Name	Town	Total
	Green and Angus	Eldoret	2
	W.A. Shaw	Eldoret	2
	Atkinson, Bown, Morrison and Ainslie	Mombasa	2
	Dacre, Shaw and Buckley	Nairobi	2
	Daly and Figgis	Nairobi	4
	Hamilton, Harrison and Matthews	Nairobi	3
	Kaplan and Stratton	Nairobi	3
	Shapley, Schwartze and Barrett	Nairobi	4
	Creswell and Lean	Nakuru	2
Total			24

Table 7.4: Asian Law Firms (1938)

Firm Name	Firm Name	Town	Total
	Nazareth and Mehta	Nairobi	2
	Sorabjee and Modi	Nairobi	2
Total			4

Europeans lawyers tended to form partnerships, while Asians preferred practising on their own. Remarkably, the largest law firms in 1938 - Daly and Figgis[20]; Hamilton, Harrison and Matthews; and Kaplan and Stratton - remain the largest firms in Nairobi.

[20] Daily and Figgis, initially known as Tonks, Daly and Figgis, is the oldest law firm in East Africa. A photograph of the firm's building in the early twentieth century is included in the appendices (Figure 16).

Table 7.5: Asian and European Private Practitioners (1938)

Town	Asians	Europeans	Total
Nairobi	13	22	35
Mombasa	9	9	18
Kisumu	2	3	5
Kitale	0	1	1
Nakuru	0	4	4
Eldoret	1	5	6
Kakamega	0	1	1
Total	25	45	70

In the 1930s, Europeans were more likely to practice in rural centres, which confirms that Asians were more urban and were concentrated in Mombasa and Nairobi. This was partly due to residency restrictions imposed by the colonial government. Eldoret had a large number of Europeans, including a sizeable South African population, and was described as a 'hotbed of racism' by one of the interviewees.[21]

7.5 African Lawyers

From 1899, Africans and Asians were entitled to be represented in the native courts by *vakeels* (local legal agents who were registered to represent clients in court) in criminal and civil matters. Before appearing in court, they were required to obtain the permission of the sub-commissioner of the province where they wished to appear. In the chief native court, permission from the judicial officer was necessary for them to appear in court. This rule also applied to barristers and solicitors.[22]

The 'africanisation' of the Colonial Service was slow, partly because of the alleged absence of competent and suitable candidates, as well as prejudice on the part of colonial governments. In the Gold Coast and Nigeria, the process of staffing the administration with Africans was by far the fastest. In particular, West Africans made a larger contribution to the Colonial Legal Service than to any other professional branch.[23] In the Gold Coast, Africans were most successful in taking over from Europeans in the judicial, legal and medical spheres during the post-war period, and by 1949 three out of seven judges and numerous magistrates were Africans.[24]

---

[21] Interview, Satish Gautama SC, Nairobi, 23 December 2007.
[22] *Native Courts Practitioners' Rules*, EALR, Vol. I, 126.
[23] Arthur Creech Jones, 'The Colonial Service', in William A. Robson (ed.) *The Civil Service in Britain and France* (London: Hogarth Press, 1956), 83.
[24] Charles Jeffries, *Partners for Progress: The Men and Women of the Colonial Service* (London: George G. Harrap and Co., 1949), 55, 57. This created problems with pay as some Africans were senior in rank

Consequently, large numbers of West African students travelled to London in order to read for the Bar.[25] Charlotte Buckhaven has described the feelings that many newly-qualified barristers would have felt once they had been called to the Bar:

> [t]he face of each student as he came forward to be called showed the same blend of pride and secret disbelief. For those from overseas, smiling and immaculate in dazzling new white wigs, this day marked a triumph of persistence in the face of difficulty; the end of many months of grind in a cold and inhospitable capital. Here was the accolade at last: the right of each to record his name in that historic book in which so many famous names have been inscribed.[26]

By contrast, in East and Central Africa, there was almost entirely an expatriate legal profession, and only a handful of African lawyers were called to the Bar. The most significant effect of this was that Kenya partly relied on British judges for more than three decades after independence.[27]

The Law Society of Kenya does not keep comprehensive records of its past members, so it is difficult to know how many African advocates were enrolled in Kenya prior to independence. According to Rustam Hira, who began practising in Mombasa in1956, there were approximately six African colonial lawyers. The first and most well known was Chiedo More Gem Argwings Kodhek, who was called to the English Bar and began practising in Kenya in the early 1950s. Charles Njonjo, the only African to serve in the Colonial Legal Service in Kenya, was educated at the University of Fort Hare in South Africa prior to being called to the English Bar.[28] Mareka Gechaga and Sam Waruhiu SC trained in England, while S.M. Otieno and Henry Warithi were trained in Bombay. Otieno, who later became one of Kenya's most prominent lawyers, studied in Bombay from 1953 to 1959, returning to Kenya in 1961.[29] He was able to do so under a scholarship scheme arranged by Oginga Odinga, who later became Kenya's first vice-president. Odinga had befriended Apa Pant, the Indian high commissioner, with whom he set up the scheme, and during

---

to Europeans; this was partly solved in the Gold Coast by fixing basic salaries but adding extra expatriation pay for Europeans.

[25] Ibid., 140.

[26] Charlotte Buckhaven, *Barrister By and Large* (Bath: Chivers Press, 1985), 13.

[27] Morris and Read, *Indirect Rule*, 116-117.

[28] Sean Morrow and Khayalethu Gxabalashe, 'The Records of Fort Hare', *History in Africa* 27 (2000), 481.

[29] David W. Cohen and E. S. Otieno Odhiambo, *Burying SM: The Politics of Knowledge and the Sociology of Power in Africa* (London: James Currey, 1992), 80.

the 1950s a number of Kenyans undertook legal and medical training in India. On Otieno's return to Kenya, he discovered that the fact that he had obtained his law degree in India and not in England meant that the European community would not accept him as a true 'gentleman'.[30] Although the legal culture that Otieno had been a part of in Bombay was British in many respects, legal training in India was generally looked down on by European lawyers and those Asians who had been called to the Bar in London.[31] In this regard, one of the interviewees stated that some of his colleagues had qualified in India 'but they [hadn't turned] out to be particularly good lawyers and the practice [had] died down'.[32]

7.6 Courtroom Interaction

Oral advocacy was central to the adversarial system of English law that was in place in colonial Kenya, and lawyers, through their exchanges with judges in court, were able to influence judges' final decisions.[33] Kenya's colonial lawyers were strongly guided by English precedent, which often meant that the arguments of advocates and the decisions of judges were disproportionately concerned with English cases, with little attention being paid to the policy reasons for those earlier decisions.[34]

There were a number of public expectations as to the behaviour and attributes required of judges, both in Britain and the colonies. In Kenya, their role was often defined by the conduct that was expected of them in the particular social position they occupied in colonial society. These expectations were derived from judges' own perceptions of acceptable judicial behaviour, as well as the expectations and perceptions of the advocates who appeared before them. Accordingly, the judicial role had a dynamic aspect and was open to 'negotiation' between the judge and the advocate.[35] This symbiotic relationship, however, was not always apparent in colonial Kenya's courts. The main reasons for this are twofold. First, the relative lack of expertise on both sides did not foster the same level of debate in courtroom exchanges. Second, the judiciary was influenced by the race-conscious political

[30] Cohen and Odhiambo, *Burying SM*, 80.
[31] Interview, I.T. Inamdar, 22 April 2008.
[32] Ibid.
[33] Paterson, *Law Lords*, 35-36.
[34] Ibid.
[35] Ibid., 3-9.

environment that characterised Kenya in the 1950s. This contributed to a lack of trust between Asian lawyers and colonial judges.

7.6.1 Judges on Trial

This section is based in the oral testimony of a group of advocates interviewed in Kenya during 2007 and 2008. In many cases it is uncorroborated, as there is very little archival or case material to back up the advocates' claims; in some cases, however, fragmentary documentary evidence exists. Triangulation is the process of using more than one method or source, or a number of accounts of events when conducting research, and is a particularly useful methodology in cases where there is little or patchy evidence.[36] For example, J.H.S. Todd, who served as a crown counsel during the 1950s and was elevated to the bench after independence was described by an advocate in the following terms:

> Todd commanded very little respect among lawyers. Not sharp-witted and with very low IQ. Should never have become a judge. Confused. Didn't have that aura. A judge is somebody you want to respect.[37]

One of the few references to Todd is contained in the *Kenya Staff Lists.* This records that he had an undistinguished career in the Colonial Legal Service in Kenya, first as an acting resident magistrate, then as crown counsel between 1943 and 1951. He then left the Legal Service and practised as an advocate and was only appointed as a puisne judge in 1976. To a certain extent, this career trajectory supports the dismissive views expressed by the informant.

On the other hand, no historical sources were found to support another advocate's description of Charles Connell as someone who 'was always regarded as a chap who was slipshod…the story was…he must have [had] a connection and ended up as a judge in the colonies.'[38] Sometimes individual judges were only mentioned by a single advocate, which casts doubt on the veracity of the oral evidence. For example, James Templeton was regarded by an advocate as having being appointed only because he was European and not on merit: 'Templeton – a nutcase, 'white skin

---

[36] Robert G. Burgess, *In the Field: An Introduction to Field Research* (London: George Allen and Unwin, 1984), 144.
[37] Anonymous Informant no. 1, Nairobi, 29 April 2008.
[38] Interview, Rustam Hira, Nairobi, 8 February 2008.

got him the position'.[39] Edward Trevelyan was remembered as a judge who would readily enter into debates with advocates, where they would try to persuade him of the merits of the case. He would vigorously reciprocate while remaining relaxed and pleasant. He was described as an extremely studious, sharp-witted man with a fantastic memory, who could quote particular judgments together with the volume and page numbers in court.[40]

In some cases, similar views about an individual judge were expressed by more than one advocate. For example, Acting Judge J.R. McCready was notorious for being the most racist member of the Kenyan Bench in the 1950s. According to one advocate:

> McCready was always [known as] "Mr Maximum". [He went] to an English public school, then came here during the War. I think he was a Lieutenant Colonel in the Army. He was obviously from a very rich family. Then became for years on end, a senior resident magistrate; never became a confirmed judge because of his abrasive manners. Only as an acting judge and that was it – he was always known as "Mr Maximum".[41]

A second advocate stated that McCready was known as 'Bwana Maximum' among the Africans. Ultimately, he paid a terrible price for his racist attitudes:

> McCready – another queer chap, very strange. He was murdered. He had a piece of land in Nanyuki, which was being coveted by others, and he was always known by the locals as "Bwana Maximum". He always gave huge sentences in prison…and had no time for the locals and one day they approached him, one chap had a *runga* and bashed him on the back of the head…[and killed him].[42]

---

[39] Interview, Satish Gautama SC, Nairobi, 16 November 2007. 'SC' denotes his status as Senior Counsel. Queen's Counsel were appointed in Kenya until 1963. After independence there was no formal distinction between senior and junior advocates until 2001 when President Mwai Kibaki instituted a system whereby senior advocates could apply to be appointed as senior counsel.

[40] Interview, Anonymous Informant no. 1, Nairobi, 29 April 2008. Like Todd, Edward Trevelyan served in the Colonial Legal Service, firstly as a resident magistrate and senior resident magistrate between 1952 and 1963. He was appointed as a puisne judge in 1964, a post he held until 1982. KLR series and *Kenya Staff Lists* (Nairobi: Government Press).

[41] Interview, Rustam Hira, Nairobi, 8 February 2008.

[42] Interview, Byron Georgiadis, Nairobi, 3 November 2007. In the case of *Mwangi s/o Nganga v. R*, Worley, Jenkins and Briggs, held that '[a]s regards sentence, the robbery was aggravated, as being by more than one person, but this was a first offence and the sentence of 20 years was in effect a life sentence and the maximum. We thought it manifestly excessive and considered that the learned Judge had based it on a supposedly proved intention to steal ammunition if available'.

A third lawyer offered a very strikingly different view: he remembered McCready as '…a very very strict judge. Strict punishments. If you went before McCready and were [found] guilty, you knew you were going to get a heavy prison sentence. No question. He was my favourite [judge].'[43]

Lawyers tired of handling simple criminal cases year after year. Many of these were pauper briefs with similar facts, and advocates preferred the more intellectually challenging civil matters, or high profile criminal cases.
Satish Gautama SC, was born in 1920 and admitted as an advocate in 1942. He estimated that he had handled between 3,000 and 4,000 murder cases during his first 25 years as an advocate:

> …I've done a lot of trials. In my younger days for 25 years, I've done, you know, these pauper briefs? I've done between [3000 and 4000] murder cases. Well this country when you talk of murders, two people get drunk, you know, stab each other to fight over women…some very stupid, primitive things. Drink, women or land…I've done about 500 rapes, about 1000 receiving stolen property. I was in court for 25 years and then I lost interest…dull [as] ditchwater…nothing interesting about it. A murder case in English is very different, in India it's very different… here it's so clumsy…you know if you get drunk, stab somebody…it doesn't require any brilliance…On the evidence we all know what is murder…and you've got to prove that…it's not very often that you have any interesting cases.[44]

What qualities did advocates expect and find in the judges they appeared before? This theme was frequently brought up by the advocates, and it was interesting to note which judges stood out in their memories of court exchanges, which often stretched back half a century or more. One retired advocate, who had been one of Kenya's best criminal lawyers, summarised his views on what the attributes of a first-rate judge should be. First, he expected judges to be good listeners in court, and to remember that court cases were not 'debating games' between themselves and advocates. Second, advocates deserved respect as fellow professionals and were to be given the opportunity to present their arguments without undue hindrance. Third, it was important that judges displayed humour in court to put the advocates at ease, particularly in criminal cases. Judges needed to be 'fearless' when making judgments and sentencing convicts, as well as impartial: in civil cases, the best judges refused to

[43] Interview, Anonymous Informant no. 2, Nairobi, 2 May 2008.
[44] Interview, Satish Gautama SC, Nairobi, 23 December 2007.

hear either of the parties outside the courtroom.[45] In doing so, they strove to uphold the oft-cited aphorism expressed by Lord Hewart in 1924 that 'it is not merely of some importance but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done'.[46] Some judges had domestic problems; according to one advocate the most ill- tempered ones were henpecked at home, and often arrived at court sullen and bad tempered, which materially affected their judgments.[47]

Certain judges were singled out by many of the lawyers as being outstanding and advocates often made comparisons between judges in order to illustrate the attributes and abilities of their favourites. This greatly enhanced the validity of their oral testimony. Advocates generally had greatest respect for those judges who had been successful as lawyers prior to being appointed to the Bench. These judges were extremely rare, as most had spent their entire careers in the Colonial Legal Service, starting off as resident magistrates or crown counsel. C.B. Madan QC was especially well-remembered. His appointment was a dramatic moment in the history of East Africa, as he was the first and only non-white to be appointed as a judge in colonial Kenya. He was also one of a handful of judges who were appointed directly from the Bar, having never served in the Colonial Legal Service. He began legal practice in the early 1940s, and was an active politician on the legislative council before being appointed a QC, and later a judge. He was admired as a successful lawyer and as having a great legal brain.[48] He was described as the greatest jurist Kenya had ever had and 'the judge of the judges'.[49] Others felt, however, that he was 'a good judge, but not in the same class as O'Connor or Briggs'.[50] He was remembered as a man who liked to 'live', and had a reputation as a 'great womaniser and boozer' in Nairobi.[51] At the same time, he was an 'oriental through and through' and was very learned in Indian philosophy, music and poetry He had the ability to come down to the level of the ordinary man and didn't use his judicial office to remain aloof. With

[45] Interview, Anonymous Informant no. 3, Mombasa, 29 April 2008.
[46] *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256 at 259.
[47] Interview, Anonymous Informant no. 3, Mombasa, 29 April 2008.
[48] Interview, Sam Waruhiu SC, Nairobi, 29 April 2008.
[49] Interview, Anonymous Informant no. 1, Nairobi, 29 April 2008.
[50] Interview, I.T. Inamdar, Nairobi, 22 April 2008.
[51] Interview, Rustam Hira, Nairobi, 8 April 2008; Interview, Anonymous Informant no. 1, Nairobi, 29 April 2008.

his political background, he had gained an insight into the human character, was very sharp-witted and had a poetic approach in his judgment.[52] In this regard, one advocate referred to Madan's judgment in the highly publicised case of *Stanley Munga Githunguri v Republic*.[53] Madan closed the hearing by saying to Mr Githunguri, 'when you leave here raise your eyes unto the hills and a prayer of thankfulness that your fundamental rights are protected under the judicial system of Kenya'.[54]

Another judge who was highly respected because of his previous experience at the Bar was Briggs, who was appointed as a judge in the Court of Appeal for Eastern Africa in 1953 and was promoted to vice-president four years later. One advocate described him in the following terms:

> [n]ot all of [the judges] were competent, some were…I will tell you about individuals like this…now Briggs, for instance, he was a brilliant man. He was one of the leading lawyers on Malaysia and for some reason he decided to leave Malaysia and then became [a] judge of the Court of Appeal…A brilliant man, but…very short-tempered but very profound intellectually.[55]

Mr Gautama was under the impression that Briggs had been appointed to the Court of Appeal directly from the Malaya Bar, when in fact he had joined the Colonial Legal Service in 1947. He was appointed as a registrar in Malaya in 1948, and became a puisne judge the following year before being posted to Nairobi. The point is that he had practised as a barrister in Malaya and commanded great respect among advocates in Kenya as a result. He was also the first person whom Mr Gautama remembered as having made a success at the Bar who was later appointed to the Court of Appeal. In this case, the memories of the three advocates who appeared before him are supported by Brigg's entry in *Who was Who*; this records that he had excelled both at Trinity College, Oxford, where he won the Open Classical Scholarship, as well as in his Bar examinations in the Inner Temple. He went on to practice for 12 years at the Malaya Bar before joining the RAF in the Second World

---

[52] Interview, Anonymous Informant no. 1, Nairobi, 29 April 2008.
[53] (1987) 2 *Nairobi Law Monthly* 7, cited in Gibson Kamau Kuria and Algesia M. Vazquez, 'Judges and Human Rights: The Kenyan Experience', *Journal of African Law* 35 (1991), 142-173. In *Githunguri* the applicant had been accused of certain violations of the Exchange Control Act, 1981. In 1980, the attorney-general informed him he would not be prosecuted. However, in 1984, a different attorney-general resurrected four of the charges. Without dealing with the merits of the case, the High Court ruled that Mr Githungiri's constitutional right to a fair hearing within a reasonable time had been contravened.
[54] (1987) 2 *Nairobi Law Monthly* 7 at 24.
[55] Interview, Satish Gautama SC, Nairobi, 16 November 2007.

War. This is another example of how limited biographical evidence can support the testimony of an informant.

7.6.2 Racial Discrimination

The judges of the Court of Appeal for Eastern Africa were highly respected by advocates as they were highly experienced and represented the cream of the region's judges. One advocate remembered being in awe of the Court of Appeal as a young lawyer in Mombasa in the late 1950s: 'Briggs, Worley and Forbes - it was a very demanding Bench…The Court of Appeal was a great thing in those days. It really meant something'.[56] One Asian advocate, Rustam Hira, remembered Briggs, Worley and Nihill as being the most feared judges in the Court of Appeal.[57] Often, young advocates in Mombasa used to go to court just to see what the judges were like, and a few months into his 'early green years' of advocacy, he went to listen to D.N. Khanna, an Asian whom he regarded as Kenya's pre-eminent advocate in the late 1950s:

> I said that the greatest civil advocate we had in this country was a man called D.N. Khanna. At the age of 21 he got a first class [degree] at the London School of Economics in law…and he was one of the few people who stood up to the white judge. There was a lot of prejudice in those days, don't forget. Lots of people got silk in those days, KC and QC, and Khanna never got it because he was the one man who [stood up to] the white man…and you know the judiciary was dominated by the white man. Anyway, I qualified and came back to Kenya. I came back in July [1956], and I got attached to chambers you know, and then the Court of Appeal came to Mombasa. It used to come twice a year and it came to Mombasa in September. I remember putting on my best suit and getting ready, and going and sitting down in the front row…One of the few things your master taught was to go through the law reports…In those days, and even today, you look at those law reports, you will see a lot of Khanna…I'd heard the reputation of Khanna and I remember sitting in court and the appeal being called and Worley was the senior judge of the Court, the President of the Court. And within seconds, he kept saying to Khanna, "what absolute nonsense, what tripe, what absolute nonsense, what tripe". You know, within seven, eight minutes. And I was in a state of shock, I keep reading about this man's reputation and

[56] Interview, Rustam Hira, Nairobi, 8 February 2008. Briggs was appointed directly from Malaya to the Court of Appeal in 1953 and retired as vice-president in 1958; Sir Newnham Worley was appointed directly as vice-president to the Court of Appeal from British Guiana in 1951, and retired as president in 1957; Alistair G. Forbes was transferred from the Gold Coast to Kenya in 1956 to take up the office of puisne judge. He served on the Court of Appeal between 1957 and 1962.
[57] Interview, I.T. Inamdar, Nairobi, 22 April 2008.

> [why is] he being treated like this? And then this man did what he did…[he] stood up and he looked squarely at the judge. Took off his wig. Stroked his hair back. Took off his gown, dusted it down. He used to wear a monocle [and he] took [it out] and cleaned it with his gown and looked at Worley and said: [m]y Lord, you keep interrupting me by making the remarks, "this is nonsense", "this is nonsense", "this is nonsense"". Yes, let me remind you here and now, as well as your brothers, on seven previous occasions you have held my submissions to be "nonsense" [while] Her Majesty and the Privy Council have [held] my arguments to be common sense…[58]

Racial prejudice against Asians in both the Supreme Court and Court of Appeal is well known but hardly documented, and was seldom alluded to in the interviews. The narrator of this account, a newly-qualified advocate who admired both Worley and Khanna, interpreted the judge's conduct as being racist, implying that a European advocate would have received better treatment. He went further by suggesting that Khanna would certainly have taken silk given his superior qualifications and unquestioned ability, but that his attitude towards the colonial judges prevented him from achieving the honour. European advocates might have dismissed these arguments by pointing out that Worley had a reputation for being irascible in court regardless of the race of the advocate appearing before him. There was, however, clearly a racial undertone to this encounter. Mr Khanna was representing the respondent in a civil matter, and despite his spirited address, the court decided to rule against him and allow the appeal.[59]

With regard to racial discrimination between judges and Asians, one Asian advocate who was enrolled in the mid-1950s and remains in practice, stated that he had never encountered any hostility or racist attitudes by colonial judges. He knew, however, of a few court cases between European parties and Asian or African parties where it was widely accepted among the lawyers that there had been judicial bias in favour of the Europeans, regardless of the nature of the legal issues involved. He ascribed this to the 'general colonial attitude', and believed that up until independence, Africans hardly counted for anything to colonials except being servants, and there was always a judicial bias against them.[60] There was also bias against Asians but, in his opinion, they 'knew how to stand up for themselves'.[61] This

[58] Interview, Rustam Hira, Nairobi, 8 February 2008.
[59] Ibid.
[60] Interview, Anonymous Informant no. 4, Nairobi, 2 May 2008.
[61] Interview, Anonymous Informant no. 4, Nairobi, 2 May 2008.

comment reveals the complex and subtle nature of the racism that characterised the colonial Bar in Kenya. In the course of one interview, he complained of instances where there had been judicial bias against Asians and Africans, but ended by declaring that Asians were better able to combat this discrimination than Africans. This possibly implied that he believed Asian lawyers were to some extent racially superior, although he may have simply been referring to that fact that Asians were more confident before colonial judges in court.

One informant emphasized that '[y]ou need to be a human being to be a good judge. There are millions of Christians, Muslims, Hindus and Jews. There are very few human beings.'[62] He spoke of the difficulty of being completely impartial towards other religions and specifically referred to stereotypes in Kenya, such as the widespread belief that Muslims were thieves. He believed that racial and religious prejudice was part of the psyche of certain judges, and their ability to act impartially was compromised before they had even entered the courtroom.[63] Apart from racist attitudes towards Asian and African advocates by judges, many European advocates were prejudiced against their Asian counterparts. One described one of his colleagues as '…one of the nicer, better Asian advocates. He's still in practice. We pull each other's leg. I know him very well. But there have been [Asian] advocates who perhaps taught the African advocates about corruption…'[64]

Clive Salter QC was well known as being the leader and spokesperson of the settler community who opposed the granting of independence to Kenya in 1963. When one of the Asian interviewees started practice, he subscribed to the widespread view that Salter was a hard-core settler with a pre-independence mentality, who had acted as a judge during the Mau Mau rebellion. Once he began working with him, however, he found him to be not only amiable, but also a methodical and analytical lawyer who prepared exhaustive notes of his submissions and wouldn't leave anything to chance.[65] Another remembered Salter as being far more senior than him but appeared as his junior on occasions and even against him.[66] These are examples of Asians working with a man who embodied settler values but was an extremely

---

[62] Interview, Anonymous Informant no. 3, Mombasa, 2 May 2008.
[63] Ibid.
[64] Interview, Anonymous Informant no. 5, Nairobi, 12 November 2007.
[65] Interview, Anonymous Informant no. 1, Nairobi, 29 April 2008.
[66] Interview, I.T. Inamdar, Nairobi, 22 April 2008.

competent lawyer, being one of the only English Queen's Counsel in Kenya.[67] As a result of their professionalism, they were able to transcend their racial ideologies, something that rarely occurred in Kenya's highly segregated society.[68]

7.7 Conclusion

The aim of this chapter has been to explore judge's identities by gauging their attitudes, competence and roles from the perspective of the advocates' who appeared before them. The colonial Bar in Kenya was unique in a number of respects. First, unlike West Africa, there were virtually no African lawyers in the colony, and the profession was dominated by Europeans, although Asians were numerically superior by the 1950s. This was one of the factors for the lack of contact between the lawyers and the vast majority of Africans. The other was the fact that lawyers were prohibited from appearing in African courts. This meant lawyers spent most of their working lives in either Nairobi or Mombasa, as well as a few smaller centres that were visited by judges on circuit. Their professional world, therefore, consisted of contact with other lawyers and the judges in the corridors and courtrooms of the Supreme Court, a sphere that consisted mainly of Europeans and Asians which was far removed from much of Kenyan society. This fostered the creation of a colonial legal identity as both advocates and judges attempted to re-create the atmosphere of the Inns of Court in Nairobi and Mombasa. During the course of the interviews, many advocates struggled to recall the names of men they had appeared before over 50 years previously. After being presented with lists of the judges who served in the 1950s, they began reminiscing about the ones who had made the strongest impressions on them as young lawyers. The names of most of the judges discussed in this chapter repeatedly came up, and there was often a strong correlation between the views of European, Asian and African advocates. Kenya's judges in the 1950s were clearly a mixed bag, ranging from talented jurists, such as Briggs, to eccentrics

---

[67] QCs were also appointed in Kenya, but held a lower status in eyes of many lawyers to those who had taken silk in England.

[68] Salter's legal skill was also referred to by Byron Geordiadis who had appeared with him in the Supreme Court in a number of occasions. Interview, Byron Georgiadis, Nairobi, 7 November 2007; these two lawyers' memories of Salter as one of Kenya's most distinguished advocates are of interest as they contradict David Anderson's account of the lawyer in *Histories of the Hanged*: 'Salter, a Kenya settler and magistrate who had been elevated to the Special Emergency Assize Courts…' David Anderson, *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire* (London: Phoenix, 2006), 171.

like McCready, who would have struggled to find employment in British courts. Ultimately, however, as one advocate observed, all legal safeguards came down to individual judges, whatever their abilities or outlooks, as they had the power to dissolve people's rights in the exercise of their discretion.[69]

[69] Interview, Anonymous Informant no. 1, Nairobi, 29 April 2008.

CHAPTER EIGHT

JUDICIAL CHOICE

8.1 Introduction

Like the preceding chapter, this chapter is set in Kenya in the 1950s. Rather than investigating the identities of advocates and judges in a colonial setting, however, its focus is on judicial decisions made during the Mau Mau rebellion between 1952 and 1959. On the whole, the administration wished to maximise the number of convictions, but the judges generally did their best to maintain their independence. Legally, this was extremely difficult as the regulations they were called upon to interpret were often capable of only one meaning. If these laws had gone through the normal legislative process, there would probably have been greater scope for equitable legal interpretation. A small number of advocates interviewed during the study practised during the Mau Mau period. Their testimony confirms the existence of a racial divide between Asians and British judges, but also highlights divisions between European and Asian advocates. This was most apparent in the discriminatory manner pauper briefs were allocated by the attorney-general's department. Sir Evelyn Baring, Kenya's governor for the duration of the rebellion, promulgated a series of regulations to deal with the uprising, and much of the chapter is concerned with a specific law that set out how offences relating to the possession of arms and ammunition were prosecuted.

An analysis of the law exposes differences of opinion between judges in the Supreme Court of Kenya and the Court of Appeal for Eastern Africa. It is also apparent that some lower-tier judges had in certain instances acted without the same degree of integrity or competence as their colleagues in the Court of Appeal. Accordingly, the chapter explores the emergence of new kinds of layered judicial identities within the colonial state. Court of Appeal judges represented the cream of the Legal Service and were products of its system of transfers and promotions. Through an analysis of case law relating to the Mau Mau rebellion, the chapter assesses the extent of the legal skill and impartiality expected of them. Although they attempted to maintain a sense of judicial independence, it was clear that this ideal could never be realised in colonial Kenya. A discussion of judicial identities through

an analysis of case law, therefore, is a useful and alternate means of assessing the role of the judiciary within the colonial state.

8.2 Background

Following the end of the Second World War, Kenyan society entered a period of political crisis. First, there were approximately five million Africans in the territory yet they were virtually unrepresented both in government and in the legislative council.[1] The second issue was land. The large-scale appropriation of land by settlers was deeply resented from the start of colonial rule and disputes over it became a major political issue for the colonial government from the 1930s onwards. This was mainly due to significant increases in the African population and the hardening of boundaries between white farms and African reserves.[2] In Kenya, Southern Rhodesia and South Africa, white settlement was seen as an effective means of achieving economic progress. Settlers had a disproportionate influence over government policy and appropriated the best land. This was at the expense of disadvantaged Africans, who were forced to become wage labourers or put in reserves. The resulting demands on Africans, such as paying taxes, growing crops, making way for settlers, and travelling to new areas in search of work transformed social structures.[3] Furthermore, the Depression of the 1930s created a fiscal crisis that forced the government to encourage peasant production. The policy continued until 1944, when settlers and the government decided to scale back peasant production in favour of large-scale state projects, such as communal terracing and grass-planting campaigns. This was part of a general move against emerging African capitalists and their representatives in the Kenya African Union and the banned Kikuyu Central Association; John Lonsdale and D.A. Low termed this 'the second colonial occupation'.[4] Government-appointed chiefs replaced their traditional counterparts and played a major role in effecting government policy as teachers,

---

[1] David M. Anderson, *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire* (London: Phoenix, 2006), 9.
[2] Ibid., 10.
[3] Anthony Clayton and Donald C. Savage, *Government and Labour in Kenya, 1895-1963* (London: Frank Cass and Company, 1974); Roger M. A. van Zwanenberg, *Colonial Capitalism and Labour in Kenya, 1919-1939* (Nairobi: East African Literature Bureau, 1975).
[4] David W. Throup, *Economic and Social Origins of Mau Mau* (London: James Currey, 1987), 4; John Lonsdale and D.A. Low, 'Introduction', in D.A. Low and Alison Smith (eds.) *History of East Africa*, Vol. III. (Oxford: Clarendon Press, 1976), 1-63.

agricultural instructors, and clerks.[5] Sir Phillip Mitchell, Kenya's governor between 1944 and 1952, had a reputation as a pro-African administrator in Tanganyika and Uganda. His governorship was a failure, however, as he was anxious to placate the settlers so as to avoid derailing his development plans. At the same time, he continued to promote indirect rule and allied himself with British-appointed chiefs, who became increasingly dictatorial, and failed to accommodate African politicians.[6]

The colonial government first became aware of Mau Mau in 1948, with the renewal of unrest among Kikuyu squatters on white settler farms.[7] A quarter of a million lived on farms in the 'White Highlands', and constituted approximately a quarter of the total Kikuyu population and half the farm labour force. Mau Mau was banned in 1950 and two years later, violence erupted on the farms, in the Kikuyu reserves as well as in the slums of Nairobi. The squatters' position was threatened with the introduction of increased restraints on cultivation and grazing rights. Following the assassination of a prominent loyalist chief, Waruhiu wa Kungu, Governor Evelyn Baring declared a state of emergency in October 1952; Jomo Kenyatta was soon arrested along with 180 others. By 1954, the number of police had tripled and the Kikuyu Guard numbered over 20,000. The army consisted of a full division made up of six battalions from the King's African Rifles (KAR) and five from Britain, backed by bombers from the Royal Air Force. It was withdrawn from operations in late 1956, four years after the Emergency had been declared.[8]

Mau Mau was overwhelmingly a Kikuyu movement and most whites knew little of Kikuyu society and few spoke the Kikuyu language. As a consequence, the majority accepted the widely held stereotypes of Mau Mau fighters as bestial murderers that were in circulation at the time. The Kikuyu were equally uncertain about how to maintain social order, and increasingly became a divided people riven by mutual hostility.[9] The government encouraged loyalists to resist Mau Mau by arming chiefs and tribal policemen; the latter suffered huge losses during the first year of the war, with a death rate of approximately ten per cent. One reason for this

---

[5] Throup, *Economic and Social Origins*, 5.
[6] Ibid., 2-3.
[7] Also termed 'labour tenants'. John Lonsdale, 'Mau Maus of the Mind: Making Mau Mau and Remaking Kenya', *Journal of African History* 31, no. 3 (1990), 394.
[8] Ibid.
[9] Ibid., 396.

extraordinarily high rate of attrition was that tribal police possessed arms, which Mau Mau fighters needed most and were willing to risk their lives to obtain it.[10] Insurgent attacks were largely confined to the first two years of the war and to specific areas in the districts of Nyeri and Fort Hall.[11]

David Throup has argued that decision-making within the colonial government after 1945 and the process of policy formation by Kenyan officials, such as colonial secretaries and provincial commissioners, became more important than the views of officials in the Colonial Office in London.[12] This led to a metropole-colony divide with the 'men on the spot' doing their own thing. Mau Mau is portrayed as an organised but flawed political response to various pressures, such as the reorganisation of peasant agriculture and the creation of a stable wage labour force on the farms. Ultimately, however, the overriding problem was the government's inability and unwillingness to deal with the demands of Kikuyu capitalism.[13]

Kikuyu chiefs who were loyal to the colonial government played a crucial role. They saw the violence of the 1950s as the result of a long process of 'shuffling through the successive African leadership groups who hoped that economic, social and political progress would come through co-operation with the government'.[14] African leaders failed to achieve this, however, which resulted in deep divisions within African society. Examples of this were the urban-rural dichotomy and how the rebellion approached civil war among the Kikuyu in a number of areas. Despite these multiple disunities Mau Mau has been described by Carl Rosberg and John Nottingham as the 'expression of a frustrated modern nationalism' rather than a narrow and isolated cult.[15] In response to the rebellion, a series of emergency regulations were promulgated that covered almost every area of public life in Kenya, and introduced a range of new offences, six of which carried mandatory capital sentences.[16]

---

[10] Lonsdale, 'Mau Maus of the Mind', 397.
[11] Ibid., 398.
[12] Throup, *Economic and Social Origins*, 1.
[13] Ibid.
[14] John Lonsdale, 'New Perspectives in Kenya History: A Review Article.' *African Affairs* 66, no. 265 (1967), 350.
[15] Carl Rosberg and John Nottingham, cited in ibid.
[16] They were promulgated under the Emergency (Powers) Order-in-Council, 1939.

8.3 The Emergency

Most of the advocates who were interviewed had little court experience during the Emergency, which was proclaimed by the governor, Sir Evelyn Baring, on 20 October 1952 and lasted until 12 January 1960.[17] This was because many were only enrolled as advocates towards the end of 1950s, and a number studied in Britain during much of that period. Nevertheless, some advocates gave interesting insights into relations between advocates and judges during the rebellion. For instance, those who defended Mau Mau accused persons maintained that, on the surface, trials in the Supreme Court were generally 'above board'.[18] The judges were described by one advocate as being 'generally fair but more inclined to believe the prosecution'.[19] Judges went through the motions and followed established court procedure, albeit drastically altered during the Emergency, to the last detail. Significantly, in contrast to 'normal' cases, lawyers were met with far fewer obstacles or obstructions from the Bench. They had greater freedom to proceed with their arguments, although they often knew what the result was going to be.[20]

The first Asian advocate who was obliged to act as a prosecutor by the attorney-general initially adhered to the legal doctrine that the judiciary's role was to apply the law, not to make it: '…the courts were pressurised…but the courts are there to apply the law. We don't make the law. The law is made by parliament. [If the accused person] is found in possession of an explosive, what do you do about it?'[21] After securing his first conviction in a capital case, however, he found his position untenable, and was unable to continue with a clear conscience. Eventually, he successfully applied to the attorney-general to be released from his duties.[22]

Every accused person on a capital charge was entitled to legal representation, and judges also had a discretion, though rarely exercised, to assign counsel in manslaughter and other serious cases.[23] These pauper briefs were supposedly apportioned on an equal basis among all racial groups by the attorney-general. In

---

[17] Anderson, *Histories of the Hanged*, 390-393.
[18] Interview, I.T. Inamdar, Nairobi, 22 April 2008.
[19] Interview, Mirabeau Da Gama Rose, Nairobi, 23 October 2007.
[20] Interview, M.Z.A. Malik SC, Nairobi, 2 May 2008.
[21] Interview, Satish Gautama SC, Nairobi, 23 December 2007.
[22] Interview, Satish Gautama SC, Nairobi, 5 November 2007.
[23] KNA AP/1/1130, Joseph Sheridan to Registrar, Memorandum, 7 August 1936.

practice, however, Asian and Africans were assigned a disproportionate number of pauper briefs by the legal department. Furthermore, European advocates sometimes refused to take pauper briefs unless specifically instructed to do so by the attorney-general, and junior Asian and African advocates, often unable to secure more lucrative work, accepted them.[24] Significantly, European, rather than Asian or African advocates, were sometimes instructed to defend loyalist chiefs accused of capital crimes, an example of the partial ways in which briefs were assigned by the legal department in an effort to influence the outcome of trials.[25]

8.4 Aims and Methods

This chapter is based on reported cases. These are cases that have been identified by judges as having sufficient legal significance to warrant being published in the law reports and becoming part of the common law.[26] The decision to use these reports in the study was partly dictated by time constraints, as there are hundreds of unreported cases in the archives that would take many months to read. Second, the aim of the research is to demonstrate the judiciary's role in a strictly legal sense. A distinct disadvantage of this approach is that it necessarily excludes many interesting (though generally not legally illuminating) unreported cases. As a result, it is not possible to provide a complete overview of the Emergency period using the rich factual material in the unreported cases. Reported cases, however, are able to provide a fairly accurate memorial of judicial views on specific subjects.[27]

There are only fifty reported judgments in the KLR and EACA series relating to the Emergency. Nine of these were murder cases, two were brought under the Kenya Criminal Procedure Code (which dealt with the administration of Mau Mau oaths), 34 were brought under Regulation 8 of the Emergency Regulations, 1952

---

[24] Interview, Anonymous Informant no. 6, Nairobi, 23 October 2007; Interview, Anonymous Informant no. 7, Nairobi, 13 November 2007.
[25] Interview, Anonymous Informant no. 5, Nairobi, 12 November 2007.
[26] The law developed through court judgments, as opposed to statutory law, is known as common law. Unreported cases also form part of the common law, but remain in court archives and are rarely referred to.
[27] Hugh Corder, *Judges at Work: The Role and Attitudes of the South African Judiciary* (Cape Town: Juta, 1984), 4. A separate catalogue exists in the Kenya National Archives for the hundreds of unreported cases relating to the Mau Mau rebellion. What distinguishes these cases from the thousands of other unreported criminal cases is, firstly, the unique nature of the rebellion in Kenya's history. Secondly, most of the trials were heard in a three-year period between 1953 and 1956 in specially constituted courts under emergency laws.

(which dealt principally with the possession of arms and ammunition), and five were concerned with miscellaneous offences. Only one Privy Council case was reported, which was an appeal against a conviction for the unlawful possession of ammunition.[28]

Two observations can be made from these figures. First, although hundreds of Mau Mau accused persons were convicted of murder, only seven of those cases were deemed by the judges to have contributed sufficiently to the development of the law of homicide in Kenya to be included in the law reports. Second, 68% of the reported cases were brought under Regulation 8. This disproportionately high figure both reflected the regulations' legal significance and virtually mirrored the number of those executed between 1952 and 1958: 753 out of 1090 convicts were hanged on offences brought wholly or partly under Regulation 8, a figure of 69%.[29]

8.5 Emergency Regulations

Following the declaration, the governor proclaimed regulations for securing public safety, the defence of the territory, the maintenance of public order and the suppression of mutiny, rebellion and riot. These regulations were valid even when they conflicted with other laws and could modify or suspend ordinary laws. They also allowed the governor to delegate law-making powers to different persons or authorities. It was possible under such powers to provide for the detention, deportation and exclusion of persons from Kenya, the requisition of property and the entering and searching of any premises. The legislature had no control over the promulgation of such regulations, and it was extremely difficult to challenge the validity of the regulations in court. The effect of repressive legislation was to place the person and property of Kenyans, especially those in Central Province, at the mercy of the administration. Through these regulations, a distinct system of administration, both powerful and centralised, was firmly established in Kenya.[30] Some of the regulations affected the operation of the legal system and can be classified into two groups. The first category extended the public order and disciplinary powers of the

---

[28] *Kuruma s/o Kaniu v R*, Privy Council Appeal 35 of 1954, (1954) 21 EACA 364.
[29] Execution returns in TNA: PRO CO 822/1256, cited in Anderson, *Histories of the Hanged*, 353.
[30] Yash P. Ghai, and J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Nairobi and New York: Oxford University Press, 1970), 411.

administration, matters that would ordinarily have come before the courts. The second set of regulations reduced the procedural and other safeguards regarding serious criminal offences, and curtailed judicial discretion regarding sentencing. The general effect of regulations that fell within the second category was to decrease the safeguards of criminal hearings in order to speed up trials and increase the rate of convictions.[31] The new procedures allowed trials to take place without preliminary inquiries, and judges were only required to make shortened and simplified records of court proceedings.[32] The rules of evidence relating to confessions before police officers were also relaxed. With regard to appeals, the minimum number of Court of Appeal judges required was decreased to a single judge. The judges were forced to accept this attack on the safeguards of the criminal trial. Within the narrow confines left to them, however, many endeavoured to ensure that justice was administered with due regard to the rights of accused persons.[33]

In addition to these procedural regulations, others introduced a range of new offences, six of which carried mandatory capital sentences. The most important was Regulation 8 of the Emergency Regulations, 1952, which covered the possession of arms and ammunition and the offence of consorting with persons accused of such possession.[34] The 34 reported cases brought under Regulation 8 were divided into ten categories: component parts of firearms; unlawful possession of ammunition; unlawful possession of firearms; consorting; joint possession of firearms and ammunition; judicial notice of armed conflict and gangs; lawful authority and lawful excuse; and withholding information. The following paragraphs use cases that fell into some of these categories to illustrate aspects of judicial interpretation during this period.

8.6 Firearms and Ammunition

There were large-scale firearm thefts between the start of the Emergency in October 1952 and the end of 1953, the year when the Mau Mau movement was at its

---

[31] The most important were the Emergency (Criminal Trial) Regulations of 1952 and the Emergency (Emergency Assizes) Regulations of 1953. All the Emergency Regulations were passed under the Emergency (Powers) Order-in-Council of 1939.
[32] During preliminary inquiries, the prosecution witnesses testified and the magistrate made a decision whether or not the trial would go ahead based on that evidence.
[33] Ghai and McAuslan, *Public Law*, 159-160.
[34] Regulation 8A (1) (a) and (b) and Regulation 8C (1) respectively.

strongest. During that period, the military lost 31 weapons and recovered five; the police lost 101 and recovered 30; and the tribal police lost 121 and recovered 15. The most serious theft of firearms occurred during a raid on the Naivasha Police Station on 26 March 1953. A Mau Mau gang under the command of 'General' Dedan Kimathi stole 47 weapons, including 18 automatics and 3,780 rounds of ammunition. The tribal police and Kikuyu guard often had little support from the Army or police, which partly explains why 106 weapons were not recovered. By the end of 1954, the arms position was reaching a state of equilibrium. During the first 20 months, the C.I.D. kept an accurate record by calibre of all ammunition stolen and recovered, and by the end of 1953,159,300 rounds had been reported lost and 8,600 recovered. An analysis of a sample of 880 spent .303 cases revealed that 70% were made between 1942 and 1948. Based on these figures, Corfield has argued that most of that ammunition was in the hands of Mau Mau fighters, which amounted to approximately 150,000 rounds.[35]

8.7 The Cases

8.7.1 Home-Made Guns

Numerous cases came before the Court of Appeal on the point of law of whether home-made guns fell within the meaning of the definition of a firearm set out in the regulations: 'a lethal barrelled weapon of any description from which any shot, bullet or any other missile can be discharged, or which can be adapted for the discharge of such shot, bullet or other missile'.[36] In *Kamau s/o Njeroge and another*, the appellants were found in possession of two lengths of piping designed as gun barrels, seven bolts adapted as gun bolts and a metal clamp designed as a gun breach.[37] The acting trial judge sitting in the emergency assize court was William Goudie, who served as a legal officer in the army during the war and was appointed as a senior resident magistrate in Kenya in 1948. He was unable to conclude whether or not the appellants were aware of the presence of the bolts, which were found inside a stove, or the clamp. Nevertheless, he ruled that the pipes were component parts of a firearm and the

[35] F.D. Corfield, *Historical Survey of the Origin and Growth of Mau Mau: Presented to Parliament by the Secretary of State for the Colonies* (London: HMSO, 1960), 231.
[36] (1954) 21 EACA 257 at 258.
[37] (1954) 21 EACA 257. In case titles, s/o denotes 'son of', w/o denotes 'wife of', and d/o denotes 'daughter of'.

appellants were sentenced to death. On appeal, Sir Barclay Nihill, the president of the Court of Appeal, concluded that all the prosecution had been able to prove was that the piping was suitable raw material that could have become the barrels of home-made guns.[38] In this case, the bore of the piping could not have taken any type of shot then available in Kenya. He ruled that it would be stretching the definition of a firearm too far to hold that a piece of material which, if fashioned in a particular way, was a component of a gun. In other words, the two lengths of piping could only be called component parts of a gun if they could be assembled with other parts, without any intervening process, into a weapon. He was unable to conclude that the metal pipes formed part of a weapon and the appeal was allowed.

Certain interpretations of Regulation 8, however, led to bizarre judgments, such as that of H. Sherrin, who acted as a judge in *Kingore s/o Wangombe*.[39] The appellant was convicted of being in unlawful possession of a Very pistol (flare gun). The definition of a firearm, set out in the previous case, also included any weapon adapted or designed for the discharge of a 'noxious liquid' or gas. After hearing the facts, Sherrin arrived at a number of conclusions: Very pistols were not designed as weapons but rather as signalling instruments; the flare gun had a barrel from a which a missile or noxious liquid could be discharged; and the gun was potentially lethal. The Court of Appeal disagreed with his view that the pistol was inherently lethal and that a missile could be discharged from it. They agreed, however, that 'there was just enough in the rather scanty evidence given by the so-called expert from which the judge could infer that an illuminant squib or rocket fired from a Very pistol when used a weapon could be noxious'.[40] Even though it was clear that no noxious liquid was contained in the gun in question, the appeal was dismissed.

Cases involving the possession of home-made guns came before the courts in increasing numbers, and there are numerous judgments which examine the question of proof by expert witnesses. One such case was *Githenji s/o Kabiro and another*.[41] In convicting the two appellants for possession of firearms, Law, the acting judge, simply held that 'the two firearms are lethal weapons capable of discharging bullets'.[42] The

[38] Sir Enoch Jenkins and Paget John Bourke concurred.
[39] (1953) 20 EACA 198.
[40] (1953) 20 EACA 198 at 200. Squibs are tiny equivalents of sticks of dynamite.
[41] (1955) 22 EACA 368.
[42] Ibid.

Court of Appeal held, however, that the prosecution had not proved whether or not the home-made guns were firearms within the definition. They identified problems in the prosecution's case whose evidence was based on the statement of a policeman, who was not speaking as an expert. As a consequence, his testimony that each of the 'guns' had all the components necessary to fire ammunition was rejected, and the appeal was allowed.[43] In a similar case, *Gatheru s/o Njagwara*, another police officer was called as the expert witness. No evidence was led as to the length of time he had served as an officer, or when he had examined any home-made weapon other than the one which was the vital piece of evidence in this case, and the appeal was allowed.[44]

8.7.2 Possession of Ammunition

By 1954, possession of ammunition, however small the quantity, had become a capital offence. Two cases illustrate the complexities that faced the courts when dealing with this issue. In *Kuruma s/o Kaniu*, the appellant was walking along a public road and was stopped and searched by a police constable at a roadblock.[45] Two bullets were found in one of his pockets. The defence lawyer submitted that the search was unlawful, as only police officers of or above the rank of assistant inspector had the power to search him. He also submitted that police were only authorised to search someone who they reasonably suspected of having stolen goods in their possession. After considering the facts, Law found that the initial stopping and searching of the appellant was unlawful and irregular. Nihill agreed, but after making reference to English common law in support of the trial court's decision he dismissed the appeal.[46]

The case was then taken to the Privy Council, which considered the issue of whether the fact that the evidence was illegally obtained should have rendered it inadmissible. The appellant was a man of good character who had obtained permission from his European employer to visit his reserve. He knew there was a roadblock on the road he chose to travel, where he was liable to be stopped and searched; nevertheless, he decided to continue, even though there were a number of

[43] (1955) 22 EACA 368.
[44] (1954) 21 EACA 384. Sir Newnham Worley and Francis Briggs concurred with Nihill's judgment.
[45] (1954) 21 EACA 242.
[46] With the concurrence of Worley and Briggs.

alternate routes. The Committee eventually concluded that the test to be applied was whether the evidence was relevant to the matters in issue. Significantly, in dismissing the appeal the Committee declared that there were 'matters of fact which caused them some uneasiness' and wished to call them to the attention of the secretary of state.[47]

The second case is *Mwangi s/o Wambugu*, where the appellant was found in possession of a single bullet.[48] He had been living with a Mau Mau gang for several months and claimed he had been forced into their service. During his time in the bush, the government had dropped 'surrender leaflets' by aircraft offering amnesty to Mau Mau fighters who turned themselves in, and the appellant decided to escape and surrender to the authorities. Before he left, he decided to steal a single bullet to prove he had been with the Mau Mau gang. He didn't have, or even claim to have, lawful authority for his possession of the bullet, and the legal issue before the trial court was whether or not he had a lawful excuse for such possession. The acting trial judge, Law, commented that the term 'lawful excuse' was not defined in the regulations. The excuse relied on by the appellant was the invitation to surrender and implied promise of immunity contained in the leaflets. However, he unfairly described these as documents of an administrative nature which had no legal effect.

The Court of Appeal ruled that he had interpreted 'lawful excuse' far too narrowly by saying it could only be defined by statutory law; the regulations only contained the words 'lawful authority'. The case's significance lies in the fact that the Court of Appeal decided to move beyond the narrow confines of the regulations; the judges ruled that the distinction between lawful authority and lawful excuse lay in the state of mind of the possessor. In the regulations, lawful authority was absolute: if possession was proved, an appellant would be found guilty. However, the Court of Appeal chose to widen the law by providing that lawful excuse was a valid explanation which justified possession. The appellant was able to demonstrate an intention to deal with the arms or ammunition in a public-spirited way (in this case, handing the bullet to the police) instead of in a subversive way, and the appeal was allowed.

---

[47] Privy Council Appeal No. 35 of 1954, (1954) 22 EACA 364 at 367.
[48] (1954) 22 EACA 246.

8.7.3 Possession of Firearms and Ammunition

In *Kimari s/o Mihindi and five others*, a large patrol of security forces, during the course of a large sweeping operation, discovered six Mau Mau fighters in a concealed hideout.[49] One was found in possession of a home-made gun and another had five rounds of ammunition in his breast pocket. Nihill held that where persons were found together in a confined space, the presence of a few small objects such as rounds of ammunition in the pocket of one of them is not necessarily known to the others so as to make them in joint possession of the bullets.[50] He added that it was likely all six appellants knew of the existence of the bullets but that 'likelihood is one thing and proof beyond all reasonable doubt is another'.[51] According to British norms, if there was any doubt in the judges' minds about a material fact, the benefit of that doubt went to the accused person.

Proving the intention of accused persons charged with possession of arms and ammunition was often problematic. In *Mwangi s/o Nganga,* the appellant and two others had burgled a house, and his role was to act as guard over the servants.[52] Among other items, the other two men stole ammunition and a pistol. Mwangi was convicted by the acting trial judge, J. R. McCready, of possession of 74 rounds of ammunition contrary to the Emergency Regulations, as well as of robbery.[53] He was sentenced to death on the first count and to 20 years' imprisonment with hard labour on the second count.

On appeal, Worley, the acting president of the Court of Appeal, held that

> [a]s regards sentence, the robbery was aggravated, as being by more than one person, but this was a first offence and the sentence of 20 years was in effect a life sentence and the maximum. We thought it manifestly excessive and considered that the learned Judge had based it on a supposedly proved intention to steal ammunition if available.[54]

The conviction and sentence for unlawful possession of ammunition was quashed and the sentence for robbery was reduced from 20 to 12 years' imprisonment with hard labour.

---

[49] (1955) 22 EACA 472
[50] Ibid., with the concurrence of Worley and Briggs.
[51] (1955) 22 EACA 472 at 477
[52] *Mwangi s/o Nganga v. R* (1954) 21 EACA 308.
[53] Emergency Regulation 8A (1)(b) and s291 of the Penal Code.
[54] (1954) 21 EACA 308 at 310, with the concurrence of Jenkins and Briggs.

In *Kamau s/o Njeroge and another*, discussed above, one of the issues was whether or not two lengths of piping constituted component parts of a firearm.[55] Although the Appeal Court allowed the appeal based on this point alone, it also used the case to discuss the issue of joint possession. Goudie, the acting judge in the case, had chosen to apply the definition of 'possession' contained in the Kenya Penal Code, which was wider than the common law definition.[56] Under the Penal Code, if there were two or more persons in a party and one or more of them had anything in his possession with the knowledge and consent of the others, all were deemed to have possession of the article. Under the common law, however, to establish possession, the prosecution needed to prove that the person not in possession *had a power of control* over the person carrying the article. As there was nothing in the regulations which stated that the definition in the Penal Code had to be applied, the Court of Appeal ruled that the narrower common law definition was applicable. This favoured accused persons, as it was far more difficult for the courts to prove power of control than simple association.

8.7.4 Consorting and Demand of Supplies

In *Gathere s/o Ndegwa*, the appellant was convicted of consorting with an armed gang, the only evidence against him being his own statement to the police.[57] Nihill criticised the trial judge, Sir Owen Corrie, stating that an essential ingredient of the offence was the reasonable presumption that the accused had acted or was about to act in a manner 'prejudicial to public safety or the maintenance of public order'.[58] There was nothing in his statement to the police that could prove this and the appeal was allowed.

In *Mutemi s/o Kathu and another*, the two appellants and some others were surprised in the bush by a party of tribal policemen and scattered.[59] Four of the appellant's party disappeared into the bush and soldiers from the King's African Rifles opened fire. In response, shots were fired from the bush which were identified by the soldiers as being pistol shots. John MacDuff ruled that one of the party must

[55] (1954) 21 EACA 257.
[56] Section 5 of the Kenya Penal Code, 1930.
[57] (1954) 21 EACA 220.
[58] Ibid., with the concurrence of Worley and Briggs.
[59] (1954) 21 EACA 329.

have been armed with a pistol, and each member of that party knew that one of its members was so armed; accordingly, he sentenced them to death. The Appeal Court disagreed, ruling that the area was 'infested with terrorists' and it was a reasonable possibility that someone who was not part of the gang had fired the shots.

Gathere and *Muthemi* were heard in 1954 and indicated the Court of Appeal's disciplined attitude towards interpreting the law that related to the offence of consorting (Regulation 8C (1)). By 1955, this radically changed with the landmark decision of *Wanjiru w/o Thairu*.[60] Wanjiru was convicted of consorting with an armed gang and sentenced to death. The main issue before the court was her relationship with the gang, and the only activity that linked her to the gang was that she used to cook for them. The Court was divided on the issue and while Worley and Briggs dismissed the appeal, Nihill held that as the facts only established that she cooked for the gang, she should have been charged with contravention of a non-capital offence. What is significant about this judgment is the statement that by Worley that

> the mere existence of an armed gang of Mau Mau terrorists is, at the present day in Kenya, prejudicial to public safety and the maintenance of public order and any person consorting with and actively assisting the gang in its activities, acts in a manner contravening Regulation 8C (1)…[61]

Nihill disagreed with this statement arguing that it was unfair to charge all suspects with a capital offence without carefully examining the facts of each case. In this case, the prosecution had only established that she cooked for the gang:

> [t]o my mind the evidence had clearly established that she had knowingly consorted with armed persons [but not in a way that was prejudicial to public safety or the maintenance of public order] and that accordingly she could have been convicted under Emergency Regulation 8C (2) and sentenced to imprisonment not exceeding ten years. Alternatively she might have been charged with harbouring members of the gang or furnishing them with supplies; in either case not a capital sentence…I am not prepared to say that my colleagues are wrong in law [but] I am still of the opinion that the Crown might well have charged this woman with the lesser offence only…[62]

The principle of judicial notice of armed conflict and gangs introduced in this judgment set a dangerous precedent. The judgment effectively lowered the standard

[60] (1955) 22 EACA 456.
[61] Ibid.
[62] (1955) 22 EACA 456 at 457.

required for proving the most serious type of consorting offence. Simply by proving that accused persons were part of an armed gang, courts were automatically authorised to convict them of a capital offence.

In *Nguru s/o Murogu*, the appellant approached a hut at about eight o'clock at night and asked for food.[63] He was dishevelled, unkempt and hungry, and looked as though he had been living in the open. His first words were '[m]y need is only food'.[64] He used no threats, expressed or implied. At the trial he said he had been captured by Mau Mau terrorists, had escaped and was on his way to surrender. The acting trial judge, Goudie, rejected the story of capture and escape and convicted and sentenced him to death in terms of Regulation 8F. In terms of this regulation, it was an offence to demand commodities for the use of terrorists whether or not the person demanding them were terrorists themselves. The Appeal Court concluded that the question of whether the supplies were to be used by terrorists (which might have included the appellant), should be decided on inferences drawn from the circumstances in which the demand was made, and allowed the appeal.

8.7.5 Confessions

The significant case of *Githinji s/o Njaguna and another* provides another example of settler prejudice among certain judges.[65] It is now clearly beyond doubt that the security forces in Kenya behaved in a brutal and uncivilised manner towards many of the persons detained in their custody. Although the harsh statutory law must bear some of the blame, it seems clear from the decided cases that the courts failed to protect the detainees from the security police. In so failing, it is clear that the courts were not compelled to adopt such a course by the clear terms of the statutes, but chose to adopt interpretations of the law that favoured the executive.[66]

Githinji and a second appellant, Mwangi s/o Mweru, were convicted by Goudie of possession of a home-made gun without lawful authority or excuse, and of consorting with such a person respectively, and were sentenced to death.[67] Although

---

[63] (1954) 21 EACA 325.
[64] Ibid.
[65] (1954) 21 EACA 410.
[66] Christopher Forsyth, 'The Judges and Judicial Choice', *Journal of Southern African Studies* 12 (1985), 102-114.
[67] Contrary to regulations 8A (1)(a) and 8C (1) of the Emergency Regulations.

their appeals were dismissed by Worley, the judgment had a major impact on the law relating to confessions during the Emergency.[68] Githinji was found hiding in a maize field and near his feet a home-made gun was found. In respect of Mwangi, Goudie held that there was abundant evidence that he was in company with Githinji at the time of the arrest.[69] In his own sworn evidence he admitted having previously consorted with Githinji, but his real defence was that he was a prisoner of a Mau Mau gang and that he and the others were on their way to surrender at the time of their arrest. He made a similar statement at the Criminal Investigation Department in Nakuru, which was tendered as evidence by the prosecution at the trial. The admissibility of this evidence, however, was objected to by the defence counsel as having being involuntarily made as the result of 'inducement'.[70]

Goudie then correctly followed the procedure of a 'trial within a trial' but decided to overrule the objection and admit the statement in evidence. Worley severely reprimanded him, stating that in doing so he had 'gravely misdirected himself on the issue before him'.[71] The case's importance lies in the judges' *obiter dictum* on the treatment of detainees rather than their decision to dismiss the appeals for possession of ammunition and unlawful consorting.[72]

Mwangi testified to a police inspector that following his arrest, he was taken to a screening camp where he was interrogated by a clerk and two askaris. What follows is his harrowing account of what happened at the screening camp:

> [t]hey put a rope around my neck and the other end put round neck of accused 1. They said 'If you don't say what we ask you, you will die'. Before being questioned we were beaten up and the rope tightened. We were very frightened. I said we had killed nobody. We were beaten again and they put it to us we had killed two persons. We denied this. They asked us how we went into forest, and we said we had been captured by Mau Mau. We were beaten up again. I said I was prisoner. The askaris beat us with open palms and with butts of rifles on head and body…[73]

The appeal judges ruled that Goudie had entirely ignored the allegations of ill-treatment (which were not contradicted by the prosecution), and had failed to

---

[68] With the concurrence of Jenkins and Briggs.
[69] (1954) 21 EACA 410 at 411.
[70] Ibid.
[71] Ibid., with the concurrence of Jenkins and Briggs.
[72] Ibid.
[73] (1954) 21 EACA 410 at 412.

address himself to the substance of the objection made by the defence counsel. Although the Court of Appeal dismissed both appeals, the judges concluded that such methods were a 'negation of the rule of law which it is the duty of the Courts to uphold, and when instances come before the courts of allegation that prisoners have been subjected to unlawful and criminal violence, it is the duty of such Courts to insist on the fullest inquiry with a view to their verification or refutation'.[74]

The judgment has a further significance in that it demonstrates the effect on the Court of Appeal's decisions on the rule of law.[75] It contained three legal principles that were binding on lower courts as well as a *quaere* (formal statement of judicial inquiry). First the court held that

> [i]t is the duty of every judge and magistrate to examine with the closest care and attention, all the circumstances in which a confession has been obtained by a police officer from an accused person, *particularly when it is alleged that the accused person has suffered ill-treatment before making the confession*.[76]

This phrase was borrowed from *Njuguna and others,* but the court stipulated that the italicised portion be added.[77] Second, the court held that the powers to detain suspects in terms of the Emergency Regulations were not exercisable where a person had been arrested on a capital offence. Third, the power to detain suspected persons in police custody pending trial did not authorise the handing over of that person to another authority. Lastly, the Court inquired what legal powers of detention was held by 'screening teams' and under whose authority they acted.

A second case relating to the treatment of detainees is *Muriu s/o Wamai and others*.[78] The acting trial judge, Alistair Cram, had convicted the first appellant of murder, and the others were convicted of being accessories after the fact. The first accused was a headman in charge of a Home Guard Post in the Kikuyu reserve and the remaining accused were under his command. Two Kikuyu farmers had been rounded up by the appellants on suspicion of taking part in Mau Mau activities and held for about 16 days. They refused to confess to being Mau Mau adherents and

---

[74] (1954) 21 EACA 410 at 414.
[75] Interview, Pheroze Nowrowjee, Nairobi, 13 November 2007.
[76] (1954) 21 EACA 410 at 410.
[77] (1954) 21 EACA 316.
[78] (1954) 21 EACA 417; this case and the events surrounding it are discussed in detail in Anderson, *Histories of the Hanged*, 297-307.

because of this they were taken out and shot by Muriu. The other appellants formed the armed party that escorted the two prisoners from the Home Guard post to the place of execution; they were present at the shooting and did their best to conceal it afterwards. Wamai had stated in his evidence that he knew the deceased man was a Mau Mau leader. In their judgment, the appeal judges accepted that according to his standards he thought this gave him some kind of right to end his life but explained to him 'that under any civilized code of law his action amounted to murder and nothing less than murder'.[79] The Court of Appeal added these words:

> [f]inally it is impossible to read the record of this case, both evidence and judgment, without appreciating that much emerged to cause the gravest concern to the court….We understand that the administration of justice in African native courts in certain areas is now under examination by a Commission of Inquiry appointed by Government. We can only trust that the investigation will be a most searching one.[80]

The significance of this case lies in the fact that Cram had openly criticised the Home Guard and by doing so, he accused the administration of being complicit in illegal detentions, torture and extortion.

8.8 The Powers of the Executive

Following the declaration of an Emergency in 1952, the legislative powers of the governor, in certain material aspects, became exactly co-extensive with those of the legislative council. Among other issues, the Court of Appeal had to decide whether or not the governor, like the legislative council, could legislate retrospectively. In the case of *Corbett Ltd v Floyd*, Briggs ruled in favour of the governor, noting that the legislation under which the Emergency Regulations were issued was passed in shadow of impending war and there was nothing novel in taking such emergency steps:

> [n]o legislature has ever been more jealous of its powers than was the Roman Senate of early republican times; but on many occasions of emergency it decided it was in the public interest that all its authority should be delegated

[79] (1954) 21 EACA 417 at 421.
[80] Ibid.

> to one man as dictator, who thereafter wielded, during the term of his appointment, powers no less absolute than those of an Asiatic monarch.[81]

He further commented on the exercise of emergency powers during the Mau Mau rebellion:

> [i]t has never in twenty years been suggested that the Order in Council was itself *ultra vires* and although since the end of the War, measures taken under it have been criticised as undemocratic and destructive of liberty, it has never so far as we are aware been suggested that such measures were incompetent.[82]

In essence, Briggs's argument was that the judiciary could not engage in an assessment of the legality of legislation, and confirmed the prevailing judicial attitudes that the courts had no constitutional role in the limitation of executive authority.[83]

8.9 Conclusion

The entire system of how justice was administered had been streamlined during the Emergency in order to process as many cases as possible. In particular, this was because the Emergency regulations created new offences that resulted in the courts becoming flooded with cases. With time, it became apparent that one level of the judiciary - the magistrates' courts and the Supreme Court - was made a part of the counter-insurgency machinery, while another, the Court of Appeal, tried to maintain its own independence and sphere of influence as moral guardian of the 'rule of law' and a check on overweening executive power.

On a number of occasions, the appeal judges chose to widen the law by moving away from literal interpretations of the regulations. They were able to 'import' common law principles, which enhanced the rights of accused persons. For instance, the defence of lawful excuse for unlawful possession of a firearm was introduced. The court also raised the standard of the test for joint possession; following *Kamau s/o Njeroge*, the prosecution needed to prove that one of the party had a power of control over the person carrying the weapon, rather than simply having to prove that because one was holding the weapon with the knowledge and consent of

---

[81] [1958] EACA 389 at 392; the Emergency Powers Order-in-Council of 1939
[82] [1958] EACA 389 at 392. O'Connor and Forbes concurred.
[83] Githu Muigai, *Constitutional Amendments and the Constitutional Amendment Process in Kenya: A Study in the Politics of the Constitution, 1964-1999*, University of Nairobi, PhD, 2001, 181.

the others, all were guilty of possession. As in the Privy Council case of *Kuruma s/o Kaniu*, the appeal judges in *Githinji s/o Njaguna* and *Muriu s/o Wamai* were legally unable to allow the appeals, but they expressed their extreme disapproval of the administration's policies and actions in their judgments. In *Githinji*, they went further by establishing principles relating to confessions that were binding on lower courts. The chapter demonstrates two divisions within the colonial state. The first was between the judiciary and the executive, as the former attempted to maintain some form of independence. The second was within the judiciary itself. This is evident in the ways Supreme Court judges and judges of appeal framed their judgments.

This final chapter brings together a number of strands that run through the thesis as a whole. It confirms that the Legal Service comprised a group of lawyers with a wide range of legal skills, aptitude for administering law in the colonies and experience. It also demonstrates that the appeal judges were not part of the colonial state to the same extent as their junior brethren who had been in the colony for longer periods. Many junior judges identified with the views of volatile settlers and African loyalists, which seriously undermined the legitimacy of their judgments. This chapter argues that the appeal judges' experience of Empire enabled them to distance themselves from the rules of conduct that facilitated the smooth running of the colonial state. Each judge of appeal had served in at least five territories during their careers and, as a result, felt a greater affinity to the ideals of Empire than to those of the Kenyan colonial government. The case of *Corbett v Floyd*, however, illustrates that fact that Kenya's judiciary was not independent during the colonial period, and that most judges, such as Francis Briggs in this case, were unwilling to challenge legislation. Clearly, many colonial judges, at all levels, shared the racist and backward-looking ideology of the colonial state. In many cases, however, their professionalism, legal adroitness and wide experience of Empire enabled them to exercise their judicial powers with discernment.

CHAPTER NINE

CONCLUSION

This thesis is an examination of the identities of the colonial judges of Kenya and Tanganyika, and their roles within the colonial state. As a result, the study is cultural and social in nature on the one hand, and political on the other. The judges were defined by their backgrounds - personal, educational and professional - and by the roles they performed in the colonies. Crucially, they defined themselves by these same criteria although their perceptions of themselves were coloured and shaped by their memories and, in many cases, their imaginations, of court life in Britain.

The reasons lawyers decided to join the Legal Service were varied. Arguably the strongest motivation was economic, as a career in the Legal Service offered a sensible career choice: a non-taxable salary and pension, as well as other benefits such as an annual paid passage and free accommodation. By contrast, life at the Bar was a gamble. There were huge rewards for the most successful barristers but those at the bottom struggled to make a living; in addition, as solicitors were their only clients, advantageous personal connections were vital for success. As a result, only the best young barristers were able to build successful practices. A colonial career also appealed to those lawyers with a sense of adventure who wanted to experience the Empire. The Legal Service offered a career that was not limited to a single colony or regional group and there was also the appeal of belonging to a prestigious *corps d'elite* within the Colonial Service, which was in many respects a hierarchy of social status. Others strongly believed in the ideals of Empire and in the positive effects of upholding a British conception of the rule of law in Africa. It is also evident from a number of judgments that some judges were altruistic in their approach, especially in their willingness to use customary law. Importantly, these motivating factors can all justifiably described as 'culturally determined' as they formed a part of the 'fashionable allure of Empire'.[1]

[1] Anna Crozier, *Practising Colonial Medicine: The Colonial Medical Service in British East Africa* (London and New York: I.B. Taurus, 2007), 46.

Legal recruitment remained problematic throughout the colonial period mainly because of a paradox that characterised the legal profession in Britain: although many law students qualified as barristers each year, there were insufficient vacancies within the profession to provide employment for all of them. The remainder carried the title of 'barrister-at-law' but had no right to appear in the courts, and were forced to seek employment outside the profession. Those barristers who managed to gain access to the profession were the men the Colonial Office desired as legal officers, but their financial prospects were often far greater than those associated with a colonial career. This led to fears that second-rate barristers who were unable to make a living in Britain applied to serve in the colonies as legal officers.

As was the case for many successful members of the Administrative Service, many judges attended public schools as well as Oxford and Cambridge universities, and there was a clear link between attendance at these institutions and promotion to the higher ranks of the judiciary. The thesis also examined transfer and promotion patterns within the Empire-wide Legal Service as a means, in the words of David Lambert and Alan Lester, of 'mapping careers across the multiple sites of empire'.[2] Once officers joined the Legal Service, transfers and promotions were closely connected. This is seen in the fact that the highest-ranking judges in Kenya and Tanganyika had served in the greatest number of territories prior to their appointments in East Africa. The high number of transfers supports the argument that judges remained wedded to English law and procedure as they had less time their administrative counterparts, who were generally stationed in a single territory for their entire careers, to master the use of local laws.

More widely, the study helps to explain how the Empire functioned. Transfer and promotion patterns reveal the hierarchy of territories within the Empire, which was not uniform across all branches of the Colonial Service. For instance, while the chief justiceship of Ceylon was the most prestigious judicial post, this was not the case in respect of governors who often ended their careers in one of the larger African territories. Legal officers saw the Empire as an 'imagined community' to a greater

[2] David Lambert and Alan Lester, 'Introduction: Imperial Spaces, Imperial Subjects' in David Lambert and Alan Lester (eds.) *Colonial Lives Across the British Empire: Imperial Careering in the Long Nineteenth Century* (Cambridge: Cambridge University Press, 2006), 22.

extent than their administrative counterparts, partly because English law was applied in the vast majority of Britain's disparate colonial possessions. As their legal expertise was universally applicable, it allowed them to move between different territories and continents. As a result, they could be described as being servants of Empire rather than servants of the colonial state.

The fundamental characteristic of the colonial legal system in Kenya and Tanganyika was its pluralism: English, Indian, Customary and Muslim law was applied by judges, resident magistrates, district officers, African chiefs and Muslim leaders in a wide variety of forums. Crucially, unlike administrative officers who applied customary law or Indian codes in the district courts, judges, despite their exclusive training in English or Scots law, occupied a liminal position: in their revisional and appellate capacity as well as in cases originating in the High Courts, they applied all four kinds of law. The very existence of a pluralistic legal system was one of the factors that contributed to the phenomenon that is a central theme of this thesis: ideological conflict between the judicial and administrative branches of the Colonial Service.

During the interwar period, particularly in Tanganyika, administrative officers became increasingly exasperated with the judiciary who exercised revisionary and appellate powers over both native and district courts. They also alleged that the High Courts did not have knowledge of, or interest in, customary law. As a consequence, they wished to remove the judges' jurisdiction over the lower courts and grant powers of appeal to the governor, which they successfully achieved in 1924. In their view, the fact that they were laymen was an advantage, as they were able to guide the cases without the intrusion of legal complexities and British-trained lawyers.

To a certain extent, the colonial public sphere emerged as a result of the symbolic display of power by the colonial state.[3] Power was manifested in various ways, especially in the public administration of law; most importantly, it should be understood as 'a form of social practice…domination [as] a process rather than a

[3] Jan-Georg Deutsch, 'Celebrating Power in Everyday Life: the Administration of Law and the Public Sphere in Colonial Kenya, 1890-1914', *Journal of African Cultural Studies* 15, no. 1 (2002), 94.

moment in history'.[4] By moving away from a binary race-based approach and shifting the focus to the colonisers rather than the colonised, the study exposes the multiple fissures that were at the heart of this exercise of power. European interests were rarely unified in the colonies; this is clearly seen in the legal arena when the administration and the judiciary were often at loggerheads over the kinds of law that were implemented, how they were interpreted and who had the right to hear appeals from native courts. Essentially this conflict, which manifested itself soon after the establishment of the East Africa Protectorate, came about because two groups of colonial officers competed for legal power: one group comprised professional lawyers and the other largely consisted of laymen. As a consequence, this conflict was not simply the product of the state apparatus, and had its origins in officers' professional training.

Throughout the colonial period judicial power was compromised, especially during the interwar years when government policy was shaped by the doctrine of indirect rule, which aimed to conserve African societies by ruling through chiefs who were invested with magisterial powers in the native courts. Further, it was in the interests of the metropole to maintain the *status quo* in the colonies where governors ruled supreme; this was most clearly seen in the events surrounding the Bushe Commission, when the Colonial Office formally adopted the judicial point of view, but in practice gave the administration the upper hand.

The study highlights the importance of ideological conflict within the colonial state as a determinant of colonial identity, particularly in interwar Tanganyika. Crucially, this is a different issue to the wider question of colonial judicial independence as it relates mostly to issues connected with the supervision of native courts and criminal procedure. Throughout the colonial period, the judiciary's legal relationship with the executive remained undefined. Officials in the Colonial Office were anxious to create a constitutional framework that was legally sound, both because they wished to emulate the British standards they were accustomed to, and because they had international obligations in terms of the General Act of the Berlin Conference of 1885 to create a just legal system in East Africa. There was, however,

[4] Deutsch, 'Celebrating Power', 95; Alf Lüdtke, 'Einleitung: Herrschaft als soziale Praxis', in Alf Lüdtke, *Herrschaft als soziale Praxis. Soziologische und Anthropologische Studien* (Göttingen: Vandenhoeck & Ruprecht), 1-63, cited in ibid., 93.

a fundamental flaw within this structure on two levels: a lack of communication between the Colonial Office in London and the colonial executive (personified by the governor) on the one hand, and between the governor and administrative officers on the other. Frequently, administrative officers did not know what the law allowed or prohibited them from doing; if they did, they often considered it unreasonable and simply ignored it.[5]

The role of the judiciary in the colonial state was primarily concerned with the administration of justice. Judges defined their role in terms of their differences with the administration over issues such as which department would hear appeals from native courts. In colonial Kenya and Tanganyika, the courts played a relatively insignificant constitutional role within the colonial state; as a result, most analyses of case law are merely illustrations of judicial choice and attitudes. Nevertheless, a study of judicial choice is important for two reasons. First, its analysis allows the researcher to chart changes in judicial attitudes over time. Second, it allows the researcher to 'identify those areas of law in which the judges rather than the legislature must bear part of the responsibility for baleful developments in the law'.[6]

Nyali Ltd v Attorney General is arguably the most important constitutional case of the colonial period in East Africa.[7] The following passage from Lord Denning's judgment is widely regarded as 'the clearest statement of the judicial view that justified the exercise of the widest jurisdiction by the Crown in a protectorate'.[8] In particular, it expresses the '[colonial] courts' unwillingness to allow challenges to the legal bases of colonialism'[9]:

> [a]lthough jurisdiction of the Crown in the protectorate is in law a limited jurisdiction, nevertheless the limits may *in fact* be extended indefinitely so as to embrace almost the whole field of government. They may be extended so far that the Crown has jurisdiction in everything connected with the peace, order and good government of the area…the Courts themselves will not mark out

---

[5] Yash P. Ghai and J.P.W.B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Nairobi and New York: Oxford University Press, 1970), 23-24.
[6] Christopher Forsyth, 'The Judges and Judicial Choice: Some Thoughts on the Appellate Division of the Supreme Court of South Africa since 1950', *Journal of Southern African Studies* 12, no. 1 (1985), 102-114.
[7] [1956] 1 QB 1. This case is also discussed on p. 100.
[8] H.F. Morris and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972), 49.
[9] Ghai and McAuslan, *Public Law*, 24.

> the limits. They will not examine the treaty or grant under which the Crown acquired jurisdiction: nor will they inquire into the usage or sufferance or other lawful means by which the Crown may have extended its jurisdiction. The Courts rely on the representatives of the Crown to know the limits of its jurisdiction and to keep within it. Once jurisdiction is exercised by the Crown, the Courts will not permit it to be challenged.[10]

This greatly circumscribed judges' powers as they were unable to inquire into the legality of legislation, including regulations proclaimed by the governor during the Mau Mau period that had not been passed by the legislative council. They were, however, able and, in many case, willing to interpret legislation. Lord Parker, one of the three judges who heard *Nyali* expressed the narrow scope of the colonial judiciary's interpretative powers in the following terms: '[a]ll that [colonial judges] can do is to look at the instrument manifesting the exercising of the jurisdiction to see whether it has been lawfully exercised, according to the law in force'.[11]

Clearly, the colonial courts exercised extremely limited powers as they did not challenge the legality of legislation. Despite this, individual judges could and did exercise judicial choice by deciding whether or not the exercise of legislation was lawful. The thesis moves away from the trite observation that colonial Kenya and Tanganyika lacked independent judiciaries. Instead, it presents a more sophisticated view of the colonial state by demonstrating how, in spite of a relative lack of judicial independence, a distinct judicial identity developed within it.

Much of the thesis is concerned with the divisions between administrative and legal officers with regard to the administration of justice. The discussion on the Mau Mau period focuses on divisions within the colonial judiciary itself, in particular those between judges in the Supreme Court of Kenya and the Court of Appeal for Eastern Africa. Existing legal historiography views the Mau Mau period mainly from a historian's perspective and is based on the rich narrative accounts recorded in case files. By contrast, this thesis views the period from a lawyer's perspective by describing how and why judges used legal principles when interpreting and applying emergency regulations. Most of the cases discussed in the chapter were heard in the Court of Appeal, which highlights the disparities in attitudes and legal skill between the judges of the Supreme Court and the Court of Appeal. In addition to illustrating

[10] [1956] 1 QB 1 at 15.
[11] [1956] 1 QB 1 at 33.

the nuanced role of the judiciary within the colonial state, the detailed analysis of case law assesses the judges' legal ability and impartiality in a way that is lacking in descriptive accounts.

The executive, legislative and judicial institutions of the metropole could not be exported to colonies because of the existence of the 'colonial contradiction' that necessitated the exercise of sovereign power by colonial governments.[12] This determined the ideological position of officers serving in the Administrative Service. In addition, as there was no equivalent branch of government in Britain, their powers and functions were created and performed in an exclusively colonial setting. Most administrative officers read for non-specialist degrees and were, for the most part, not members of one of the professions in Britain. Following a short colonial training course in England, they were dispatched to the colonies as young cadets. Many remained in the same territory for the duration of their colonial careers and, with time, they became well acquainted with the local customs and languages. As they were part of a branch of the colonial executive they were obliged to obey the instructions of colonial governments.

By contrast, colonial judges felt a strong sense of belonging within the British legal profession. Some, particularly judges of appeal and chief justices, had relatively long and distinguished periods of service at the Bar. Others were called to the Bar but did not have the opportunity, or ability, to practise as barristers before leaving for the colonies. Despite these differences, the majority remained proud members of the barristers' profession throughout their colonial careers. Moreover, judges and colonial advocates sought to emulate the atmosphere of the Inns of Court in Nairobi, Mombasa and Dar es Salaam. The barristers' profession, however, had no place within a colonial state based on racial division. In other words, the nature of the colonial state did not permit the replication of a similar legal environment to that existing in Britain.

Catherine Hall has described how men and women in the nineteenth-century constantly struggled with 'questions of difference and power' in the process of

[12] Paul Nugent, *Africa Since Independence: A Comparative History* (Basingstoke, Hampshire and New York: Palgrave Macmillan, 2004), 11.

creating colonial identities.[13] She also asserted, paraphrasing James Baldwin, that they were trapped in history and history was trapped in them.[14] If history was 'trapped' in people then tracing the careers of those who travelled and lived across 'trans-imperial spaces' allows the historian to gain insights into the 'networks of knowledge' that connected the colonies to each other and to the metropole.[15]

This thesis adds to debates about colonial legal systems in Africa by suggesting that judges, to a greater degree than other colonial officers, remained 'trapped' within the particular type of professionalism that characterised the Bar. As a result, this strong sense of professionalism enabled judges to deal with the multiple 'questions of difference and power' that confronted them. The most significant of these were a pluralistic legal system; judges' relative lack of judicial independence (albeit the fact that this was often a consequence of their own making); inappropriate legal training; unfamiliarity with local laws, customs and languages as a result of the transient nature of their career patterns; divisions within their own ranks; and, most important, sustained opposition from the administration.

[13] Catherine Hall, *Civilising Subjects: Metropole and Colony in the English Imagination, 1830-1867* (Cambridge: Polity Press, 2002), 22.
[14] James Baldwin's collection of essays, *Notes of a Native Son*, provide a critique of the Civil Rights Movement in the United States. James Baldwin, 'Stranger in the Village', in *Notes of a Native Son* (Boston, MA: Beacon Press, 1957), 163, cited in ibid.
[15] Lambert and Lester, 'Introduction: Imperial Spaces', 23.

BIBLIOGRAPHY

1. Primary Sources

1.1 Bodleian Library of Commonwealth and African Studies, Oxford

RHL Mss.Afr.s.592. Papers of Sir Mark Wilson, 1936-1956.

1.2 Kenya National Archives, Nairobi

KNA AP series (Judicial Department)
KNA AG series (Attorney-General's Department)

1.3 Tanzania National Archives, Dar es Salaam

DSA series (Dar es Salaam Secretariat Archives Series)

1.4 The National Archives, Kew

TNA: PRO CO 323 (Colonies, General: Original Correspondence, 1937)
TNA: PRO CO 533 (Kenya Original Correspondence, 1905-1963)
TNA: PRO CO 822 (East Africa Original Correspondence, 1927-1951)
TNA: PRO CO 850 (Colonial Office: Personnel: Correspondence, 1932-1952)
TNA: PRO CO 877 (Colonial Office Appointments: Correspondence (1920-1952)
TNA: PRO CO 885 (Colonial Office, War and Colonial Department: Subjects Affecting Colonies, Confidential Print, 1931-55)

1.5 Official Publications

Appointments in His Majesty's Colonial Service, CSRI 1952. London: HMSO, 1952.

Colonial Office. Colonial No. 37. *Regulations for His Majesty's Colonial Services*. London: HMSO, 1928.

Colonial Office. Colonial no. 219. 'Report by Committee for Colonial Agricultural, Animal Health, and Forestry Research.' *Recommendations for the Organization of Colonial Research in Agriculture, Animal Health and Forestry*. London: HMSO, 1948.

Cmd. 4623. *Report of the Commission of Inquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika Territory in Criminal Matters.* London: HMSO, 1934.

1.6 Biographical Sources

Blue Books
Colonial Office List
Inner Temple Admissions Register
Kenya Judicial Department Staff Lists.
The Law List
The Law Journal
The Law Times
Middle Temple Admissions Register
Tanganyika Judicial Department Staff Lists
Who was Who

1.7 Printed Primary Sources

Alexander, Gilchrist Gibb. *After Court Hours*. London: Blackwell, 1950.

_____*From the Middle Temple to the South Seas.* London: John Murray, 1927.

_____*Tanganyika Memories: A Judge in the Red Kanzu.* London and Glasgow: Blackie and Son, 1936.

_____*The Temple of the Nineties*. London: William Hodge, 1938.

Buckhaven, Charlotte. *Barrister By and Large.* Bath: Chivers Press, 1985.

Burns, Alan. *Colonial Civil Servant*. London: Allen & Unwin, 1949.

Cameron, Donald. *My Tanganyika Service and Some Nigeria*. London: George Allen and Unwin, 1939.

Furse, Ralph. *Aucuparius: Recollections of a Recruiting Officer.* London, 1962.

Grantham, Alexander. *Via Ports.* Hong Kong, 1965.

Hamilton, Robert. 'Criminal Justice in East Africa. Report on the Administration of Justice in Kenya, Uganda and Tanganyika.' *Journal of the African Society* 34 (1935): 7-26.

Lugard, Frederick D. *The Dual Mandate in British Tropical Africa*. London: W. Blackwood, 1926.

Mawer, Ronnie Knox. *Tales From a Palm Court*. Oxford: Isis, 1986.

Morris, Harold. *The Barrister*. London: Geoffrey Bless, 1930.

Sayers, Gerald F. (ed.) *The Handbook of Tanganyika.* London: Macmillan, 1930.

2. Secondary Sources

Allott, Anthony N. 'The Development of the East African Legal Systems during the Colonial Period', in D.A. Low and Alison Smith (eds.) *History of East Africa.* Vol. III. Oxford: Clarendon Press, 1976.

_____*Essays in African Law with Special Reference to the Law of Ghana.* London: Butterworths, 1960.

_____*Judicial and Legal Systems in Africa*. London: Butterworths, 1970.

Anderson, David M. *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire.* London: Phoenix, 2006.

Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso, 2006.

Austen, Ralph A., 'Interpreters Self-Interpreted: The Autobiographies of Two Colonial Clerks', in Benjamin N. Lawrance, Emily Lynne Osborn and Richard L. Roberts (eds.) *Interpreters, Intermediaries and Clerks: African Employees in the Making of Colonial Africa.* Madison, WI: University of Wisconsin Press, 2006.

_____ 'The Official Mind of Indirect Rule: British Policy in Tanganyika, 1916-1939', in Prosser Gifford and Wm. Roger Louis (eds.) *Britain and Germany in Africa: Imperial Rivalry and Colonial Rule*. New Haven, CT and London: Yale University Press, 1967.

_____Book Review of Donald Cameron. *My Tanganyika Service and Some Nigeria.* London: Allen and Unwin, 1939. *The International Journal of African Historical Studies* 16, no. 4 (1983): 777-779.

Baker, J.H. *An Introduction to English Legal History.* London: Butterworths, 2002.

_____'Counsellors and Barristers.' *Cambridge Law Journal* 29 (1969): 205-229.

_____*The Common Law Profession: Lawyers, Books and the Law.* London and Rio Grande, OH: Hambledon Press, 2000.

Balandier, Georges. 'The Colonial Situation: A Theoretical Approach', in Immanuel Wallerstein (ed.) *Social Change: The Colonial Situation*. New York and London: John Wiley and Sons, 1966.

Ball, Stephen J. *The Education Debate.* Bristol: Policy Press, 2008.

Banks, Olive. *Parity and Prestige in English Secondary Education: A Study in Educational Sociology* London: Routledge and Kegan Paul, 1955.

Bates, Margaret. 'Tanganyika: the Development of a Trust Territory.' *International Organization* 9, no. 1 (1955): 32-51.

Bellot, H.H.L. 'The Exclusion of Attorneys from the Inns of Court.' *Law Quarterly Review* 26 (1910): 137-145.

Bennett, George. *Kenya: A Political History; the Colonial Period.* London: Oxford University Press, 1963.

Bentham, Jeremy. *A Fragment on Government.* Cambridge: Cambridge University Press, 1988 [original 1776].

Berman, Bruce J. *Control and Crisis in Colonial Kenya: The Dialectic of Domination*. London: James Currey, 1990.

Bertram, Sir Anton. *The Colonial Service*. Cambridge: Cambridge University Press, 1930.

Bhabha, Homi K. *The Location of Culture.* London and New York: Routledge, 1994.

Blaikie, Norman. *Designing Social Research: The Logic of Anticipation*. Cambridge: Polity Press, 2000.

Blom-Cooper, Louis. *Final Appeal: A study of the House of Lords in its Judicial Capacity*. Oxford: Clarendon Press, 1972.

Bryman, Alan. *Social Research Methods.* Oxford: Oxford University Press, 2001.

Buckhaven, Charlotte. *Barrister By and Large.* Bath: Chivers Press, 1985.

Buell, Raymond Leslie. *The Native Problem in Africa.* Vol. I. New York: Macmillan, 1928.

Burchill, Graham, Colin Gordon and Peter Miller (eds.) *The Foucault Effect: Studies in Governmentality*. London: Harvester Wheatsheaf, 1991.

Burgess, Robert G. *In the Field: An Introduction to Field Research.* London: George Allen and Unwin, 1984.

Cable, Vincent. 'The Asians of Kenya.' *African Affairs* 68 (1969): 218-231.

Callahan, Michael D. *Mandates and Empire: the League of Nations and Africa, 1914-1931.* Brighton: Sussex Academic Press, 1999.

Carr-Saunders, A.M. and Wilson, P.A. *The Professions.* Oxford: Clarendon Press, 1933.

Chatterjee, Partha. *The Nation and its Fragments: Colonial and Postcolonial Histories.* Princeton, NJ: Princeton University Press, 1993.

Clayton, Anthony and Donald C. Savage. *Government and Labour in Kenya, 1895-1963*. London: Frank Cass and Company, 1974.

Cocks, Raymond. *Foundations of the Modern Bar.* London: Sweet and Maxwell, 1983.

Cohen, David W. and E. S. Otieno Odhiambo. *Burying SM: The Politics of Knowledge and the Sociology of Power in Africa*. London: James Currey, 1992.

Coldron, John, Ben Willis and Claire Wolstenholme. 'Selection by Attainment and Aptitude in English Secondary Schools. '*British Journal of Educational Studies* 57, no. 3 (2009): 245–264.

Cooper, Frederick. 'The Dialectics of Decolonization: Nationalism and Labor Movements in Postwar French Africa', in Frederick Cooper and Ann Stoler (eds.) *Tensions of Empire: Colonial Cultures in a Bourgeois World.* London and Berkeley, CA: University of California Press, 1997.

_____*Africa Since 1940: The Past of the Present*. Cambridge: Cambridge University Press, 2002.

_____*Colonialism in Question. Theory, Knowledge, History*. Berkeley: University of California Press, 2005.

Corder, Hugh. *Judges at Work: The Role and Attitudes of the South African Appellate Judiciary.* Cape Town: Juta, 1984.

Corfield, F.D. *Historical Survey of the Origin and Growth of Mau Mau: Presented to Parliament by the Secretary of State for the Colonies,* May 1960. London: HMSO, 1960.

Cotran, Eugene. 'The Development and Reform of the Law in Kenya.' *Journal of African Law* 27, No. 1 (1983): 42-61.

_____ 'The Place and Future of Customary Law in East Africa.' *East African Law Today* (1966): 73-75.

Cotran, Eugene and N.N. Rubin. 'Introduction', in Eugene Cotran and N.N. Rubin (eds.) *Readings in African Law*. Vol. I. London: Frank Cass, 1970.

Creech Jones, Arthur. 'The Colonial Service', in William A. Robson (ed.) *The Civil Service in Britain and France.* London: Hogarth Press, 1956.

Crocker, Walter Russell. *Nigeria: A Critique of British Colonial Administration*. London: Allen and Unwin, 1936.

Crozier, Anna. *Practising Colonial Medicine: The Colonial Medical Service in British East Africa.* London and New York: I.B. Taurus, 2007.

Deutsch, Jan-Georg. 'Celebrating Power in Everyday Life: The Administration of Law and the Public Sphere in Colonial Kenya, 1890-1914.' *Journal of African Cultural Studies* 15, no. 1 (2002): 93-103.

Dewey, Clive. *Anglo-Indian Attitudes: The Mind of the Indian Civil Service*. London and Rio Grande: Hambledon Press, 1993.

Devlin, Patrick. *The Judge.* Oxford: Oxford University Press, 1979

Duman, Daniel. *The English and Colonial Bars in the Nineteenth Century.* London and Canberra: Croom Helm, 1983.

_____ 'A Social and Occupational Analysis of the English Judiciary: 1770-1790 and 1855-1875.' *American Journal of Legal History* 17, no. 4 (1973): 353-364.

Elias, T.Olewale. *British Colonial Law: A Comparative Study of the Interaction between English and Local Laws in British Dependencies*. London: Stephens and Sons, 1962.

Elkins, Caroline. *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya*. New York: Henry Holt and Company, 2005.

Forsyth, Christopher. 'The Judges and Judicial Choice.' *Journal of Southern African Studies* 12 (1985): 102-114.

Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. London: Penguin, 1991 [original, 1975].

_____*Security, Territory, Population: Lectures at the Collège de France, 1977-78*. Basingstoke, Hampshire: Palgrave Macmillan, 2007.

_____ 'The Subject and Power', in John Scott (ed.) *Power: Critical Concepts*. London: Routledge, 1994.

Gann, Lewis H. and Peter Duignan (eds.) *African Proconsuls: European Governors in Africa*. New York and London: Free Press, 1978.

_____*The Rulers of British Africa, 1870-1914*. London: Croom Helm, 1978.

Ghai, Yash P. and J.P.W.B. McAuslan. *Public law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present*. Nairobi and New York: Oxford University Press, 1970.

Gittings, Robert. *The Nature of Biography*. Seattle, WA: University of Washington Press, 1978.

Gluckman, Max. *Analysis of a Social Situation in Modern Zululand*. Manchester: Manchester University Press, 1958.

Gower, L.C.B. *Independent Africa: The Challenge to the Legal Profession*. Cambridge, MA: Harvard University Press, 1967.

Greele, Ronald J. 'On Using Oral History Collections: An Introduction.' *Journal of American History* 74, no. 2 (1987): 570-578.

Griffiths, John A.G. *The Politics of the Judiciary*. London: Fontana Press, 1991.

Griffiths, John. 'What is Legal Pluralism?' *Journal of Legal Pluralism and Unofficial Law* 24 (1986): 1-56.

Hailey, William M. *Native Administration in the British African Territories*. Vol. I., Part 1. London: HMSO, 1950.

Hall, Catherine. *Civilising Subjects: Metropole and Colony in the English Imagination, 1830-1867*. Cambridge: Polity Press, 2002.

Harvey, William B. *Introduction to the Legal System in East Africa.* Kampala, Nairobi and Dar es Salaam: East African Literature Bureau, 1975.

Heussler, Robert. *The British in Northern Nigeria*. London: Oxford University Press, 1968.

_____*British Tanganyika: An Essay and Documents on District Administration.* Durham, NC: Duke University Press, 1971.

_____*British Rule in Malaya: The Malayan Civil Service and its Predecessors, 1867-1942*. Oxford: Clio Press, 1981

_____*Yesterday's Rulers: The Making of the British Colonial Service.* Syracuse: Syracuse University Press, 1963.

Heuston, R.F.V. *Lives of the Lord Chancellors, 1940-1970*. Oxford: Clarendon Press, 1987.

Hopkins, Anthony G. 'Back to the Future: From National History to Imperial History.' *Past and Present* 164 (1999): 198-243.

Hopkins, Elizabeth. 'Racial Minorities in British East Africa', in Stanley Diamond and Fred G. Burke (eds.) *The Transformation of East Africa: Studies in Political Anthropology.* New York and London: Basic Books, 1967.

Hussey, E.R.J. Book Review of Donald Cameron. *My Tanganyika Service and Some Nigeria.* London: Allen and Unwin, 1939. *International Affairs* 18, no. 5 (1939): 726-727.

Iliffe, John. *A Modern History of Tanganyika.* Cambridge: Cambridge University Press, 1979.

Ingham, Kenneth. 'Tanganyika: The Mandate and Cameron, 1919-1931', in Vincent Harlow and E.M. Chilver (eds.) *History of East Africa.* Vol. II. Oxford: Clarendon Press, 1965.

Jeffries, Charles. *The Colonial Empire and its Civil Service.* Cambridge: Cambridge University Press, 1938.

_____*The Colonial Office*. London: George Allen & Unwin, 1956.

_____*Whitehall and the Colonial Service: An Administrative Memoir, 1939-1956*. London: Athlone Press, 1972.

Jeffries, Charles. *Partners for Progress: The Men and Women of the Colonial Service*. London: George G. Harrap and Co., 1949.

Johnson, Terence. 'Imperialism and the Professions', in Paul Halmos (ed.) *Professionalisation and Social Change.* Keele: University of Keele, 1973.

Jordanova, Ludmilla. *History in Practice.* London: Arnold, 2000.

Kennedy, Dane. *Islands of White: Settler Society and Culture in Kenya and Southern Rhodesia, 1890-1939.* Durham, NC: Duke University Press, 1987.

Kirby, R. Kenneth. 'Phenomenology and the Problems of Oral History.' *Oral History Review* 35, no. 1 (2008): 22-38.

Kirk-Greene, Anthony H. M. *A Biographical Dictionary of the British Colonial Governor.* Vol. I.: Africa. Brighton, Sussex: Harvester, 1980.

_____*On Crown Service: A History of HM Colonial and Overseas Civil Services, 1837-1997.* London: Macmillan, 2000.

_____ 'On Governorship and Governors in British Africa', in Lewis H. Gann and Peter Duignan (eds.) *African Proconsuls: European Governors in Africa.* New York and London: Free Press, 1978.

_____ 'Scholastic Attainment and Scholarly Achievement in Britain's Imperial Civil Services: The Case of the African Governors.' *Oxford Review of Education* 7, no. 1 (1981): 11-22.

_____ 'The Sudan Political Service: A Profile in the Sociology of Imperialism.' *International Journal of African Historical Studies* 15, no. 1 (1982): 21-28.

Kramer, Adam. *Bewigged and Bewildered? A Guide to Becoming a Barrister in England and Wales.* Oxford and Portland, OR: Hart Publishing, 2007.

Kuklick, Henrika. *The Imperial Bureaucrat: The Colonial Administrative Service in the Gold Coast, 1920-39.* Stanford, CA: Hoover Institution Press, 1979.

Kuria, Gibson Kamau and Algesia M. Vazquez, 'Judges and Human Rights: The Kenyan Experience.' *Journal of African Law* 35 (1991): 142-173.

LeCompte, Margaret D. 'Bias in the Biography: Bias and Subjectivity in Ethnographic Research.' *Anthropology and Education Quarterly* 18 (1987): 43-52.

Lewis, Roy and Angus Maude. *The English Middle Classes.* London: Phoenix House, 1949.

Lonsdale, John. 'Mau Maus of the Mind: Making Mau Mau and Remaking Kenya.' *Journal of African History* 31, no. 3 (1990): 393-421.

Lonsdale, John. 'New Perspectives in Kenya History: A Review Article.' *African Affairs* 66, no. 265 (1967): 348-353.

Lonsdale, John and D.A. Low. 'Introduction', in D.A. Low and Alison Smith (eds.) *History of East Africa*, Vol. III. Oxford: Clarendon Press, 1976.

Louise Pirouet, M. *Historical Dictionary of Tanzania*. London and Lanham, MD: Scarecrow Press, 1977.

Lowell, Abbott Lawrence. *Colonial Civil Service: The Selection and Training of Colonial Officials in England, Holland, and France*. London and New York: Macmillan, 1900.

MacNeil, Iain R. 'Research in East African Law.' *East African Law Journal* 47, no.3 (1967): 861-879.

MacKenzie, John M. 'Introduction', in John M. MacKenzie (ed.) *Imperialism and Popular Culture.* Manchester: Manchester University Press, 1986.

_____'Foreword', in Andrew Mackillop and Steve Murdoch (eds.) *Military Governors and Imperial Frontiers c. 1600-1800: A Study of Scotland and Empires*. Boston, MA and Leiden: Brill, 2003.

Magarey, Susan. 'Three Questions for Biographers: Public or Private? Individual or Society? Truth or Beauty?' *Journal of Historical Biography* 4 (2008): 1-26.

Malinowski, Bronislaw. 'Dynamics of Culture Change', in Immanuel Wallerstein (ed.) *Social Change: The Colonial Situation*. New York and London: John Wiley and Sons, 1966.

Mamdani, Mahmood. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism.* Princeton, NJ: Princeton University Press, 1996.

Mangan, J.A. 'Introduction: Imperialism, History and Education', in J.A. Mangan (ed.) *'Benefits Bestowed': Education and British Imperialism*. Manchester: Manchester University Press, 1988.

Marshall, Catherine and Gretchen B. Rossman. *Designing Qualitative Research*. London: Sage, 1995.

McDowell, W.H. *Historical Research: A Guide.* London: Longman, 2002.

Mills, Lennox A. 'Methods of Appointment and Training in the British and Dutch Colonial Service.' *American Political Science Review* 33 (1939): 465-472.

Morris, H.F. and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History.* Oxford: Clarendon Press, 1972.

Morrow, Sean and Khayalethu Gxabalashe. 'The Records of the University of Fort Hare.' *History in Africa* 27 (2000): 481-497.

Mudimbe, Valentin Y. *The Invention of Africa: Gnosis, Philosophy and the Order of Knowledge*. London: James Currey, 1988.

Mungeam, Gordon H. *British Rule in Kenya, 1895-1912: The Establishment of Administration in the East Africa Protectorate*. Oxford: Clarendon Press, 1966.

Nicolson, I. F. *The Administration of Nigeria, 1900-1960: Men, Methods and Myths*. Oxford: Clarendon Press, 1969.

Nugent, Paul. *Africa Since Independence: A Comparative History*. Basingstoke, Hampshire and New York: Palgrave Macmillan, 2004.

Odenyo, Amos O. 'Professionalization Amidst Change: The Case of the Emerging Legal Profession in Kenya.' *African Studies Review* 22, no. 3 (1979): 33-44.

Pannick, David. *Judges*. Oxford: Oxford University Press, 1987.

Parker, John and Richard Rathbone. *African History: A Very Short Introduction*. Oxford: Oxford University Press, 2007.

Paterson, Alan. *The Law Lords*. London: Macmillan, 1982.

Perham, Margery. 'Introduction', in Vincent Harlow and E.M. Chilver (eds.) *History of East Africa*. Vol. II. Oxford: Clarendon Press, 1965.

Phillips, Anne. *The Enigma of Colonialism: British Policy in West Africa*. London: James Currey, 1989.

Pirouet, M. Louise. *Historical Dictionary of Tanzania*. London and Lanham, MD: Scarecrow Press, 1977.

Potter, David C. *India's Political Administrators 1919-1983*. Oxford: Clarendon Press, 1986.

Ranger, Terence. 'The Invention of Tradition in Colonial Africa', in Eric Hobsbawm and Terence Ranger (eds.) *The Invention of Tradition*. Cambridge: Cambridge University Press, 1983.

Read, James S. 'Crime and Punishment in East Africa: The Twilight of Customary Law.' *Howard Law Journal* 10 (1964): 164-186.

Ritchie, Donald A. *Doing Oral History*. Twayne's Oral History Series, no. 75. New York: Twayne Publishers, 1995.

Roberts, Richard and Kristin Mann. 'Introduction', in Kristin Mann and Richard Roberts (eds.) *Law in Colonial Africa*. London: James Currey, 1991.

Roberts-Wray, Kenneth. *Commonwealth and Colonial Law*. London: Stevens and Sons, 1966

Rosberg, Carl G. and John Nottingham. *The Myth of "Mau Mau": Nationalism in Kenya.* New York: Praeger, 1966.

Said, Edward W. *Orientalism: Western Conceptions of the Orient.* London: Penguin, 1995.

St Clair, William. 'The Biographer as Archaeologist', in Peter France and William St Clair (eds.) *Mapping Lives: The Uses of Biography.* Oxford: Oxford University Press, 2004.

Salzman, Philip Carl. 'On Reflexivity.' *American Anthropologist* 104, no. 3 (2002): 805-813.

Scott, David. 'Colonial Governmentality.' *Social Text* 43 (1995): 191-220.

Seale, Clive. *The Quality of Qualitative Research.* London: Sage, 1999.

Shelson, Alan. *Biography.* London: Methuen, 1977.

Shetreet, Shimon. *Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary.* Amsterdam and New York: North-Holland Publishing Company, 1976.

Sorrenson, Maurice P.K. *Land Reform in the Kikuyu Country: A Study in Government Policy.* London and Nairobi: Oxford University Press, 1967.

Spear, Thomas. *Mountain Farmers: Moral Economics of Land and Development in Arusha and Meru.* Oxford: James Currey, 1997.

Stoler, Anne L. and Frederick Cooper. 'Between Metropole and Colony. Rethinking a Research Agenda', in Anne L. Stoler and Frederick Cooper (eds.) *Tensions of Empire: Colonial Cultures in a Bourgeois World.* Berkeley, CA: University of California Press, 1997.

_____'Rethinking Colonial Categories: European Communities and the Boundaries of Rule', in Nicholas B. Dirks (ed.) *Colonialism and Culture.* Ann Arbor, MI: University of Michigan Press, 1992.

Stone, Lawrence. 'Prosopography.' *Daedalus* 100 (1971): 46-79.

Thompson, Paul. 'Life Histories and the Analysis of Social Change', in Daniel Bertaux (ed.) *Biography and Society: The Life History Approach in the Social Sciences.* London and Beverly Hills, CA: Sage, 1981.

Throup, David W. *Economic and Social Origins of Mau Mau.* London: James Currey, 1987.

Tignor, Robert L. *The Colonial Transformation of Kenya: the Kamba, Kikuyu and Maasai from 1900 to 1939.* Princeton, NJ: Princeton University Press, 1976.

Trench, Charles C. *Men Who Ruled Kenya: The Kenya Administration, 1892-1963.* London and New York: Radcliffe Press, 1993.

Vansina, Jan. 'The Documentary Interview.' *African Studies Bulletin* 8, no. 2 (1965): 9-14.

van Zwanenberg, Roger M. A. *Colonial Capitalism and Labour in Kenya, 1919-1939.* Nairobi: East African Literature Bureau, 1975.

Wakeford, John. *The Cloistered Élite: A Sociological Analysis of the English Public Boarding School.* London: Macmillan, 1969.

Wilensky, Harold L. 'The Professionalization of Everyone?' *American Journal of Sociology* 70 (1964): 137-158.

Wilkinson, Rupert. *The Prefects: British Leadership and the Public School Tradition: a Comparative Study in the Making of Rulers.* London and New York: Oxford University Press, 1964.

Woolf, Virginia. 'The Art of Biography', in William H. Davenport and Ben Siegel (eds.) *Biography Past and Present: Selections and Critical Essays.* New York: Charles Scribner's Sons, 1965.

Young, Crawford. *The African Colonial State in Comparative Perspective.* New Haven, CT and London: Yale University Press, 1994.

Young, Robert C. 'Foucault on Race and Colonialism.' *New Formations* 25 (1995): 57-65.

3. Unpublished Theses

Crozier, Anna. *The Colonial Medical Officer and Colonial Identity: Kenya, Uganda and Tanzania before World War Two.* University College London, PhD, 2005.

Muigai, Githu. *Constitutional Amendments and the Constitutional Amendment Process in Kenya: A Study in the Politics of the Constitution, 1964-1999*, University of Nairobi, PhD, 2001.

Pearce, R.D. *The Evolution of British Colonial Policy towards Tropical Africa, 1938-1948.* University of Oxford, DPhil, 1978.

Stibbs, T.P.C. *Aspects of the Colonial Office Administration of the Trusteeship Concept, with Special Reference to Kenya and Nigeria, 1919-1943.* University of Oxford, DPhil, 1978.

4. Internet Sites

The Society of Solicitor Advocates, www.solicitoradvocates.org

Solicitors' Association of Higher Court Advocates, www.sahca.org.uk

UK Parliament Website, www.parliament.uk

TABLE OF CASES

APPENDIX A: MAPS

Figure 1: Kenya

(David M. Anderson, *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire.* London: Phoenix, 2006).

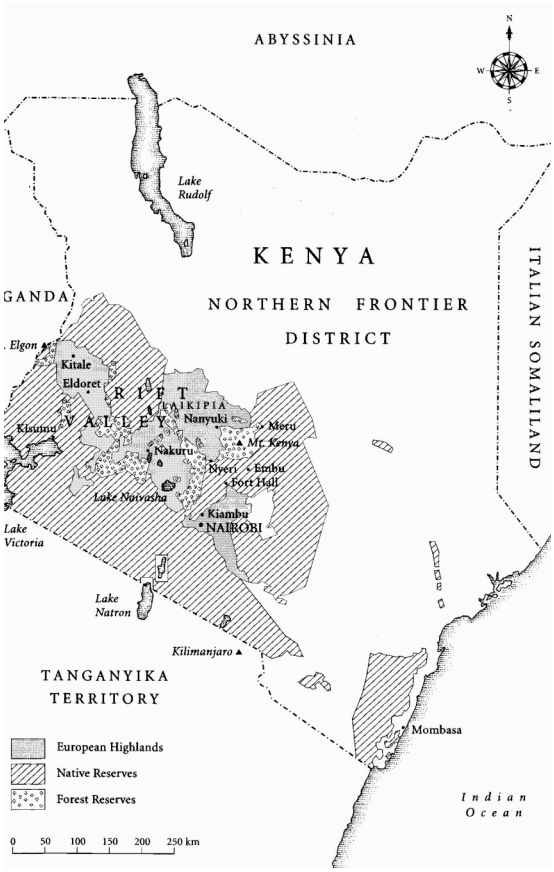


Figure 2: Tanganyika

(Gerald F. Sayers, (ed.) *The Handbook of Tanganyika.* London: Macmillan, 1930).

APPENDIX B: PHOTOGRAPHS

TNA: PRO CO 877/31/1 (Colonial Office Appointments: Correspondence (1920-1952). Photographs from the *Colonial Legal Service Recruitment Pamphet*, c. 1946.

Figure 3: Session of the East African Court of Appeal. The presiding judge is Sir Joseph Sheridan, chief justice of Kenya between 1934 and 1946.

Figure 4: The Kenyan Judiciary in front of the Supreme Court of Kenya, built in 1930. Sir Joseph Sheridan is third from the left and the judge on the far right is Ransley Thacker, who presided over the trial of Jomo Kenyatta in 1952.

Figure 5: Sir Joseph Sheridan inspecting an Askari unit.

Figure 6: The Attorney-General's House, Lagos

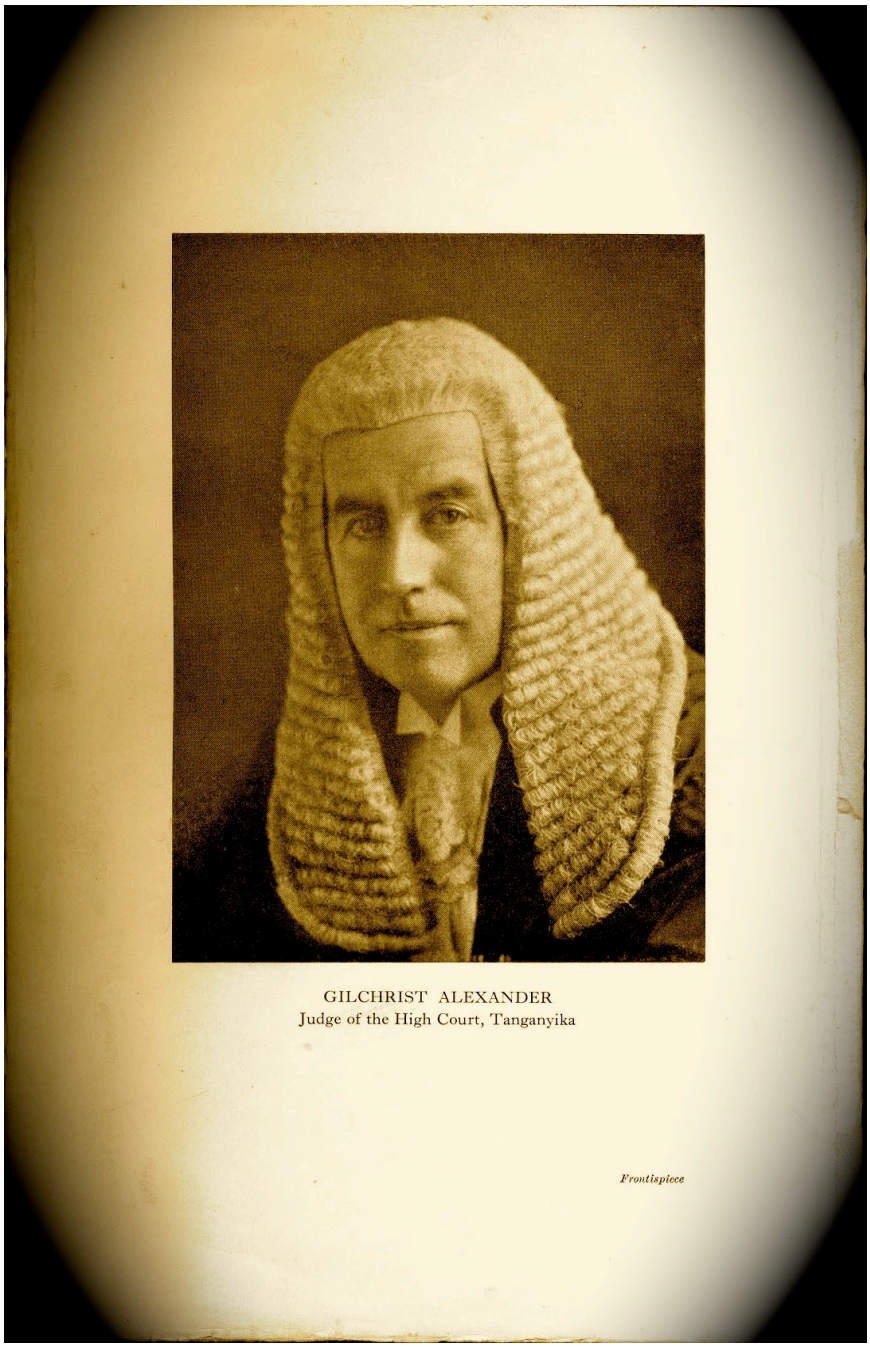
Figure 7: The White Highlands, Kenya

Figure 8: Penang Hills, British Malaya

The following five photographs are taken from one of the autobiographies of the first judge in Tanganyika, Gilchrist Alexander, who served in the territory between 1920 and 1925.

(*Tanganyika Memories: A Judge in the Red Kanzu*. London and Glasgow, Blackie and Son, 1936).

Figure 9: Gilchrist Alexander


GILCHRIST ALEXANDER
Judge of the High Court, Tanganyika

Frontispiece

Figure 10: The First High Court in Dar es Salaam

Figure 11: The Chief Justice's House in Dar es Salaam

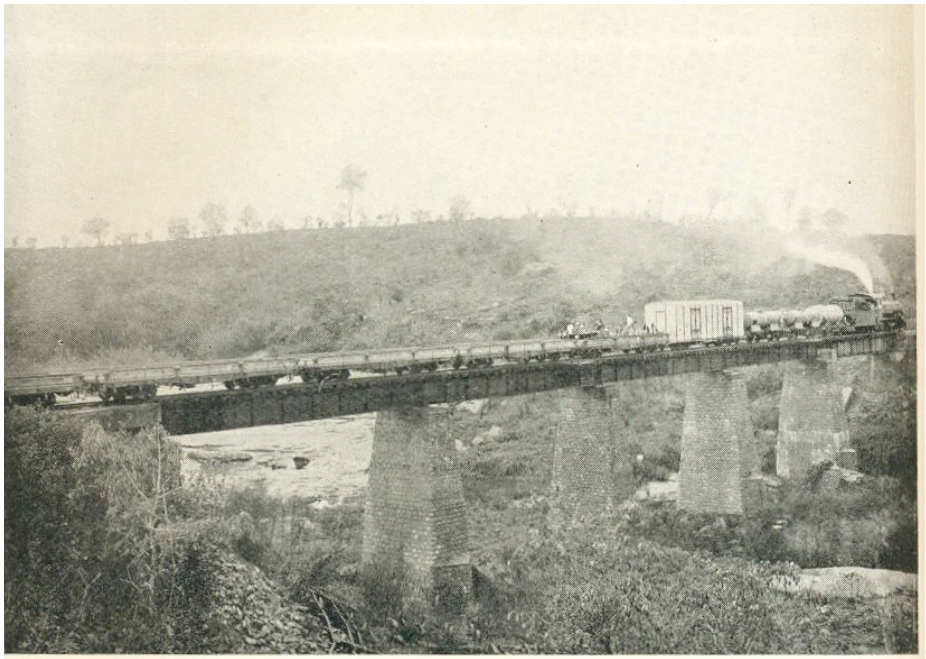
Figure 12: Prisoners and Witnesses waiting outside the High Court at Moshi.

Figure 13: Mgogo Tribesmen at Dodoma

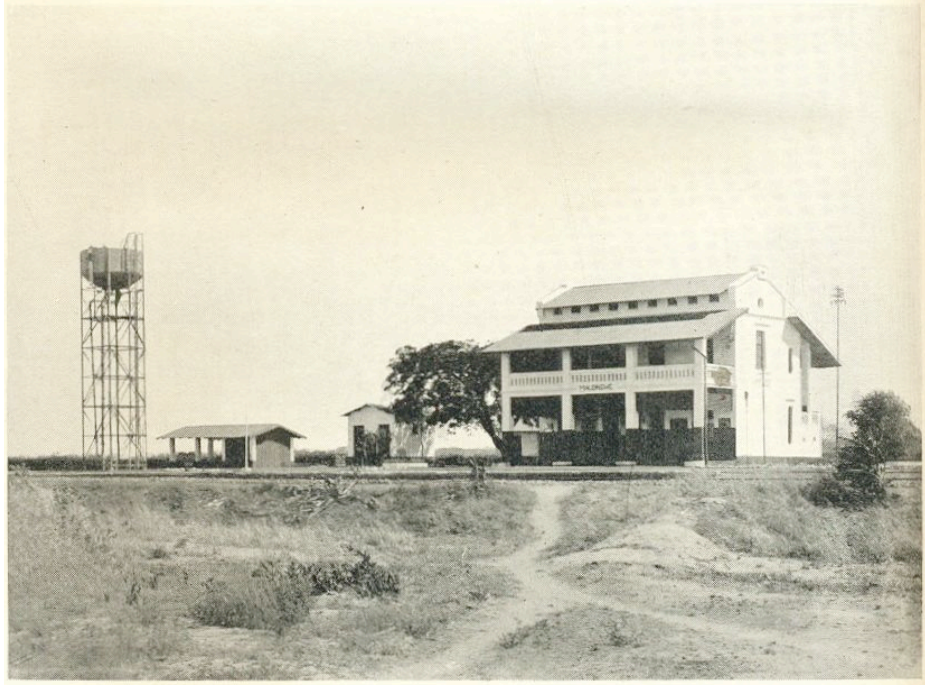
Figure 14: Railway Bridge and Wayside Station

(Gerald F. Sayers, (ed.) *The Handbook of Tanganyika.* London: Macmillan, 1930)

.



GOODS TRAIN CROSSING KINONKO BRIDGE ON THE CENTRAL RAILWAY



MALONGWE, A WAYSIDE STATION ON THE CENTRAL RAILWAY

Figure 15: *S.S. Usoga*, Lake Victoria.

(www.rarepostcard.com, accessed on 3 March 2010).

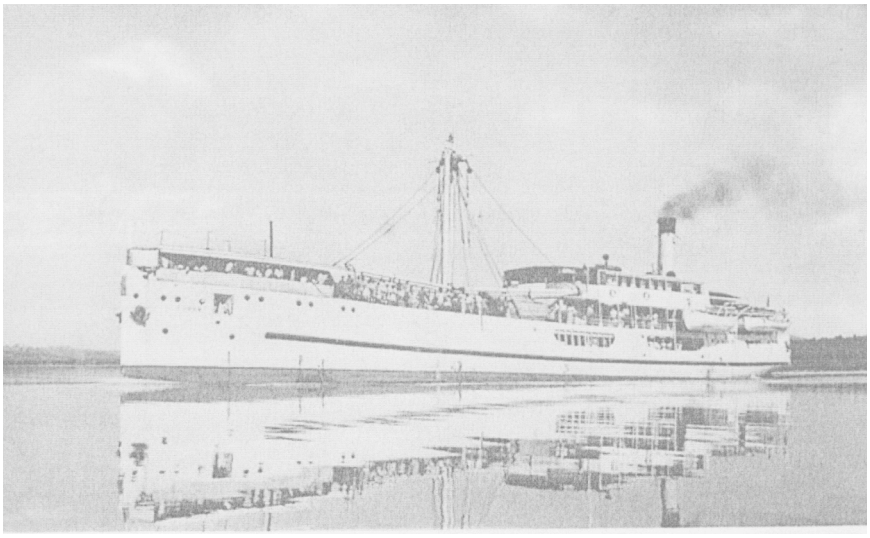


Figure 16: 'Tonks, Daly and Figgis', Kenya's Oldest Law Firm, founded in 1899.

(By kind permission of Neville Warren, senior partner, Daly and Figgis Advocates, Nairobi).

APPENDIX C: COLONIAL SERVICE RECRUITMENT, 1920-1939

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
Administrative	179	90	18	67	72	85	103	101	153	115
Legal	21	10	3	8	11	12	7	16	14	11
Financial and Customs	31	21	4	12	9	10	20	18	19	15
Police	45	32	17	14	32	19	30	19	32	33
Medical	73	63	41	49	84	129	97	121	85	107
Agricultural	46	40	17	16	35	33	30	42	59	42
Veterinary	23	10	7	7	5	8	16	9	11	11
Forestry	33	26	3	11	20	16	13	11	11	13
Other Scientific Specialists	5	7	2	2	7	8	2	18	10	6
Survey and Geological	30	32	9	5	12	15	15	19	27	17
Other	28	13	14	12	22	25	15	22	12	17
TOTAL	551	387	174	233	352	406	424	460	507	449
Percentage of Administrative appointments relative to total	32.49	23.26	10.34	28.76	20.45	20.94	24.29	21.96	30.18	25.61
Percentage of Legal appointments relative to total	3.81	2.58	1.72	3.43	3.13	2.96	1.65	3.48	2.76	2.45

	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
Administrative	80	20	25	36	44	67	68	91	96	84
Legal	16	8	7	8	9	17	22	33	26	8
Educational	65	18	4	9	7	9	18	14	14	22
Financial and Customs	14	11	3	9	21	22	11	10	21	9
Police	26	16	2	5	10	14	9	19	22	11
Medical	77	35	12	22	31	48	53	47	54	54
Agricultural	40	34	4	9	23	14	11	28	23	19
Veterinary	6	3	0	6	3	5	5	7	8	18
Forestry	14	7	4	3	2	5	9	12	12	6
Other Scientific Specialists	8	1	4	5	1	4	4	26	24	8
Survey and Geological	9	3	0	2	3	7	9	8	10	9
Other	23	9	5	7	11	19	30	11	15	7
TOTAL	378	165	70	121	165	231	249	306	325	255
Percentage of Administrative appointments relative to total	21.16	12.12	35.71	29.75	26.67	29.00	27.31	29.74	29.54	32.94
Percentage of Legal appointments relative to total	4.23	4.85	10.00	6.61	5.45	7.36	8.84	10.78	8.00	3.12

This table is based on a compilation of material from TNA: PRO CO 877/16/21, 'Candidates Appointed by the Secretary of State, 1913-1943. Statement Showing the Number of Appointments dealt with by the Appointments Department in the Years 1919-1943' in Anna Crozier, *The Colonial Medical Officer and Colonial Identity: Kenya, Uganda and Tanzania before World War Two.* University College London, PhD, 2005, 321-322.

APPENDIX D: BIOGRAPHICAL NOTES

The following biographical notes of the 77 judges included in the study have been compiled from a wide variety of sources, namely, *The Law List*, *Colonial Office Lists*, *the Inner Temple and Middle Temple Admissions Registers*, *The Law Journal*, *The Law Times*, *Judicial Department Staff Lists*, *Tanganyika Law Reports (Revised)*, *Kenya Law Reports*, *Court of Appeal for Eastern Africa Law Reports*, *East Africa Law Reports* and *Who was Who.* In many cases, it has been possible to compile a relatively comprehensive summary of judges' colonial careers. In the case of some judges, however, hardly any trace remains of their time in East Africa.

The categorisation of the tables reflects the highest rank that judges attained in Kenya and Tanganyika. For example, this accounts for the fact that there are biographical notes for only five Kenyan chief justices: the remainder were all promoted to the Court of Appeal for Eastern Africa.

PART 1: JUDGES OF THE COURT OF APPEAL FOR EASTERN AFRICA, 1950-1963

1. Bacon, Sir Roger Kt MBE

BORN		23 January 1895
DIED		17 February 1962
NATIONALITY		English
EDUCATION		Rugby
		Oxford BA
		Barrister, Middle Temple, 1923
CAREER	1914-18	War Service
	1940-44	Deputy Judge Advocate
	1944-46	Legal Adviser, War Office
	1946-55	Chief Justice, Gibraltar
	1955-57	Justice of Appeal, Court of Appeal for Eastern Africa
HONOURS		Member of the Order of the British Empire, 1943
		Knight Bachelor, 1958

2. Briggs, Sir Francis Arthur Kt

BORN		9 July 1892
DIED		6 July 1983
NATIONALITY		English
EDUCATION		Charterhouse
		Oxford BA (Open Classical Scholar)
		Barrister, Inner Temple, 1927 (Certificate of Honour and Jardine Studentship)
CAREER	1928-40	Advocate and Solicitor, Federated Malay States, Straits Settlements and Johore
	1940-47	War Service
	1947	Registrar of Supreme Court, Federation of Malaya
	1947-49	Puisne Judge, Federation of Malaya

	1949-57	Justice of Appeal, Court of Appeal for Eastern Africa
	1957-58	Vice-President, Court of Appeal for Eastern Africa
	1958-63	Federal Justice of the Supreme Court, Federation of Rhodesia and Nyasaland
HONOURS		Knight Bachelor, 1961

3. Crawshaw, Sir Edward Daniel Weston Kt QC (Aden)

BORN		10 September 1903
DIED		4 April 1991
NATIONALITY		English
EDUCATION		St Bees School, Cumbria
		Cambridge BA
		Solicitor, England, 1929
		Solicitor, Northern Rhodesia, 1930
		Barrister, Gray's Inn, 1939
CAREER	1930-33	Solicitor, Northern Rhodesia
	1933-39	Colonial Legal Service, Tanganyika
	1939-47	Colonial Legal Service, Zanzibar
	1947-52	Attorney-General, Aden
	1952-60	Puisne Judge, Tanganyika
	1960-65	Justice of Appeal, Court of Appeal for Eastern Africa
COMMISSIONS	1965-75	Foreign Compensation Committee
HONOURS		King's Counsel (Aden), 1949
		Knight Bachelor, 1964

4. Forbes, Sir Alistair Granville Kt

BORN		3 January 1908
DIED		19 July 2001
NATIONALITY		English
EDUCATION		Blundell's School
		Cambridge BA
		Barrister, Gray's Inn, 1932
CAREER	1936-39	Magistrate and Government Officer, Dominica
	1939-40	Crown Attorney, Dominca
	1940-45	Resident Magistrate, Fiji
	1945-47	Crown Counsel, Fiji, and Assistant Legal Adviser, Western Pacific High Commission
	1947-50	Legal Draftsman, Federation of Malaya
	1950-51	Solicitor-General, Northern Rhodesia
	1951-56	Permanent Secretary, Min. of Justice, and Solicitor-General, Gold Coast
	1956-57	Puisne Judge, Kenya
	1957-58	Justice of Appeal, Court of Appeal for Eastern Africa
	1958-63	Vice-President, Court of Appeal for Eastern Africa
	1963-65	Federal Justice, Federal Supreme Court of Rhodesia and Nyasaland
	1965-76	President, Court of Appeal for the Seychelles

	1965-88	President, Courts of Appeal for St Helena, Falkland Islands and British Antarctic Territory
	1970-83	President, Court of Appeal for Gibraltar
	1986-88	President, Court of Appeal for British Indian Ocean Territory
COMMISSIONS	1962-63	Chairman of Constituencies Delimitation Commissions, Northern Rhodesia
	1964	Chairman of Constituencies Delimitation Commissions, Bechuanaland
	1968	Gibraltar Riot Inquiry
	1965-73	Member of the Panel of Chairmen of Industrial Tribunals, England and Wales
	1965-73	President, Pensions Appeal Tribunals, England and Wales
HONOURS		Knight Bachelor, 1960

5. Gould, Sir Trevor Jack Kt

BORN		24 June 1906
DIED		2 May 1984
NATIONALITY		New Zealand
EDUCATION		Auckland Grammar School
		Auckland University College
		Barrister and Solicitor, Supreme Court of New Zealand
CAREER	1934-38	Supreme Court of Fiji
	1938-41	Crown Counsel, Hong Kong
	1941-46	War Service
	1946-48	Acting Puisne Judge, Hong Kong
	1948-58	Puisne Judge, Hong Kong (acted as Chief Justice)
	1958-63	Justice of Appeal, Court of Appeal for Eastern Africa
	1963-65	Vice-President, Court of Appeal for Eastern Africa
HONOURS		Knight Bachelor, 1961

6. Jenkins, Sir Edward Enoch Kt

BORN		8 February 1895
DIED		25 February 1960
NATIONALITY		Welsh
EDUCATION		Howard Gardens Grammar School, Cardiff
		Cardiff University College
		Cambridge BA LLB
		Barrister, Gray's Inn, 1924
CAREER	1914-18	War Service
	1924-25	South Wales Circuit
	1925-27	Cadet Lieutenant, Royal Field Artillery, Nyasaland
	1927	Acting Attorney General, Nyasaland
	1927-30	Assistant Registrar of the High Court, Northern Rhodesia
	1930-36	Crown Counsel, Northern Rhodesia (acted as Attorney General)
	1936-38	Solicitor-General, Northern Rhodesia
	1938-45	Attorney-General, Fiji (acted as Chief Justice)
	1945-48	Chief Justice, Nyasaland

	1948-53	Justice of Appeal, Court of Appeal for Rhodesia and Nyasaland
	1953 -	Justice of Appeal, Court of Appeal for Eastern Africa
COMMISSIONS	1941	Chairman of Fiji Hurricane Commission
	1948	Chairman of Zomba Riot Commission
	1952	Member of the Judicial Commission on the Federation of Central Africa
	1958	Commissioner for the Revision of the Laws for the Leeward Islands
HONOURS		Knight Bachelor, 1946

7. Newbold, Sir Charles Demorée KBE Kt CMG QC (Jamaica)

BORN		11 June 1909
DIED		-
NATIONALITY		English
EDUCATION		The Lodge School, Barbados
		Oxford BA
		Barrister, Gray's Inn, 1931
CAREER	1931-36	Practice at the Bar, Trinidad and Tobago
	1936-37	Principal Officer, Supreme Court Registry, Trinidad and Tobago
	1937-41	Magistrate, Trinidad and Tobago
	1941-43	Legal Draftsman, Jamaica
	1943-48	Solicitor-General, Jamaica (acted as Attorney General)
	1948	Legal Secretary, East African High Commission
	1961-65	Justice of Appeal, Court of Appeal for Eastern Africa
	1965-66	Vice-President, East African Court of Appeal
COMMISSIONS	1942-43	Member of Commission of Inquiry into Land Taxation, Jamaica
	1948-61	Member of East African Central Legislative Assembly
	1943	Represented Jamaica at the Quarantine Conference in Trinidad and Tobago
	1944	Represented Jamaica at the U.S. Bases Conference in Trinidad and Tobago
	1945	Represented Jamaica in Washington in connection with labour contracts.
	1951	Commissioner for the Revision of East African High Commission Laws
		Vice-Chairman of the Governing Council of the Royal Technical College, Glasgow
HONOURS		King's Counsel (Jamaica), 1947
		Companion of the Order of St Michael and St George, 1957
		Knight Bachelor, 1961
		Knight Commander of the Order of the British Empire, 1970

8. Nihill, Sir John Harry Barclay KBE Kt MC QC (Uganda)

BORN		1892
DIED		18 November 1975
NATIONALITY		English
EDUCATION		Felsted School, Essex
		Cambridge BA (Scholar)

		Barrister, Inner Temple, 1919
CAREER	1914	President of the Student's Union, Cambridge
	1914	War Service
	1919	Secretary, Joint Industrial Councils, Ministry of Labour
	1921	Colonial Civil Service, Hong Kong
	1927	Legal Secretary to the High Commission, Baghdad
	1934	Solicitor-General, Uganda
	1936	Attorney-General, British Guiana
	1938	Puisne Judge, Ceylon
	1942	Legal Secretary to the Government of Ceylon
	1946	Chief Justice, Kenya
	1950-55	President, Court of Appeal for Eastern Africa
COMMISSIONS	1956	Chairman, Admiralty Requirements Committee
	1958	Speaker of the Legislative Council, Tanganyika
	1959-62	Chairman, Tanganyika Sisal Industry Central Joint Consultative Council
	1962-65	Legal Member, Southwest Metropolitan Mental Health Tribunal
HONOURS		Military Cross
		King's Counsel (Uganda), 1936
		Knight Bachelor, 1948
		Knight Commander of the Order of the British Empire, 1951

9. O'Connor, Sir Kenneth Kennedy KBE Kt MC QC (Kenya)

BORN		21 December 1896
DIED		13 January 1985
NATIONALITY		Irish
EDUCATION		Abbey School, Beckenham
		St Columba's College, Dublin
		Barrister, Gray's Inn, 1924
CAREER	1915-19	War Service, Indian Army
	1919-20	Political Department, Mesopotamia
	1920-22	Foreign and Political Department, Government of India
	1924	Called to the Bar
	1924-41	Practice at the Bar
	1943-46	Acting Attorney-General, Nyasaland
	1946-48	Attorney-General, Malaya
	1948-51	Attorney-General, Kenya
	1951-54	Chief Justice, Jamaica
	1954-57	Chief Justice, Kenya
	1957-62	President, Court of Appeal for Eastern Africa
COMMISSIONS	1938-43	President, Straits Settlements Association
PUBLICATIONS		Editor, Straits Settlements Law Reports
		Various Contributions to Legal Journals
HONOURS		Military Cross, 1918
		King's Counsel (Kenya), 1950
		Knight Bachelor, 1952
		Knight Commander of the Order of the British Empire, 1961

10. Sinclair, Sir Ronald Ormiston KBE Kt

BORN		2 May 1903
DIED		11 November 1996
NATIONALITY		New Zealand
EDUCATION		New Plymouth Boys' High School, Auckland
		Auckland University College LLM (Hons)
		Oxford, BCL
		Barrister and Solicitor of the Supreme Court of New Zealand, 1924
		Barrister, Middle Temple, 1939
	1925-31	Practice at the New Zealand Bar
CAREER	1931-36	Administrative Service, Nigeria
	1936-38	Magistrate, Nigeria
	1938-46	Resident Magistrate, Northern Rhodesia
	1946-53	Puisne Judge, Tanganyika
	1953-55	Chief Justice, Nyasaland
	1955-57	Vice-President, Court of Appeal for Eastern Africa
	1957-62	Chief Justice, Kenya
	1962-64	President, Court of Appeal for Eastern Africa
	1965-70	President, Courts of Appeal for the Bahamas and for Bermuda
	1968-70	President, Court of Appeal for British Honduras
COMMISSIONS	1969-69	Chairman, Industrial Tribunals (England and Wales)
HONOURS		Knight Bachelor, 1956
		Knight Commander of the Order of the British Empire, 1963

11. Windham, Sir Ralph Kt

BORN		25 March 1905
DIED		6 July 1980
NATIONALITY		English
EDUCATION		Wellington College
		Cambridge MA (First Class Part II Law Tripos) LLB
		Barrister, Lincoln's Inn, 1930 (Buchanan Prizeman)
CAREER	1930-35	Practice at the Bar
	1935-42	Legal Draftsman, Palestine
	1942-47	Judge of the District Court, Palestine
	1947-50	Puisne Judge, Ceylon
	1950-55	Puisne Judge, Kenya
	1955-59	Chief Justice, Zanzibar
	1959-60	Justice of Appeal, Court of Appeal for Eastern Africa
	1960-65	Chief Justice, Tanganyika (Acting Governor-General, February to May, 1962)
COMMISSIONS	1965-77	Commissioner, Foreign Compensation Commission
HONOURS		Order of the Brilliant Star of Zanzibar (Second Class), 1959
		Knight Bachelor, 1961
		Grand Commander, Star of Africa (Liberia), 1964

13. Worley, Sir Newnham Arthur KBE Kt

BORN		2 March 1892
DIED		13 May 1976
NATIONALITY		English
EDUCATION		Reigate Grammar School
		Cambridge MA
		Barrister, Lincoln's Inn
CAREER	1914-37	Civil Service, Malaya
	1937-41	Solicitor-General, Straits Settlements
	1941-42	Puisne Judge, Singapore
	1942-45	Interned by Japanese
	1945-47	Resumed office of Puisne Judge, Singapore
	1947-51	Chief Justice, British Guiana, and a Member of the West Indian Court of Appeal
	1951-55	Vice-President, Court of Appeal for Eastern Africa
	1955-58	President, Court of Appeal for Eastern Africa
	1958-60	Chief Justice, Bermuda
HONOURS		Knight Bachelor, 1950
		Knight Commander of the Order of the British Empire, 1958

APPENDIX D

PART 2: CHIEF JUSTICES OF KENYA, 1900-1963

1. Ainley, Sir Alfred John Kt MC

BORN		10 May 1906
DIED		19 January 1992
NATIONALITY		English
EDUCATION		St Bees School
		Oxford BA
CAREER	1928-35	Practice at the Bar
	1935-36	Magistrate, Gold Coast
	1936-39	Crown Counsel, Gold Coast
	1939-45	War Service
	1946-55	Judge, Uganda
	1955-59	Chief Justice of Eastern Region, Nigeria
	1959-62	Chief Justice, Sarawak, North Borneo and Brunei
	1963-68	Chief Justice, Kenya
HONOURS		Military Cross, 1940
		Knight Bacheor, 1957

2. Barth, Lt-Col Jacob William Kt CBE

BORN		1871
DIED		1941
NATIONALITY		-
EDUCATION		Oxford BA
		Heidelberg University, Germany
		Barrister, Middle Temple
CAREER	1902-05	Registrar, East Africa Protectorate
	1905-20	Puisne Judge, East Africa Protectorate (Attorney-General, 1914)
	1914-19	War Service
	1920-34	Chief Justice, Kenya
COMMISSIONS	1912	Labour Commission
	1918	Soldier Settlement Commission
	1921	Punishment of Natives and Divorce
HONOURS		Commander of the Order of the British Empire, 1919
		Knight Bachelor, 1922

3. Hamilton, Sir Robert William Kt

BORN		1867
DIED		1944
NATIONALITY		Scottish
EDUCATION		St Paul's School
		Cambridge BA
		Called to the Bar, Inner Temple
CAREER	1895-97	District Commissioner, Lagos
	1897-00	Registrar, East Africa Protectorate
	1900-02	Assistant Judge and Administrator-General
	1902-05	Judge, East Africa Protectorate
	1905-20	Chief Justice, East Africa Protectorate
COMMISSIONS	1893	Secretary, Commission of Enquiry, Dominica
	1899	Secretary, Famine Relief Committee, East Africa Protectorate
	1904	Secretary, Land Commission, East Africa Protectorate
	1918	Chairman, Civil Service Commission
	1922-35	MP for Orkney and Shetland
	1931-32	Parliamentary Under Secretary, Colonial Office
HONOURS		Knight Bachelor, 1920

4. Hearne, Sir Horace Hector Kt

BORN		23 February 1892
DIED		31 December 1962
NATIONALITY		English
EDUCATION		Called to the Bar, 1925
CAREER	1916-33	Assistant District Commissioner, District Magistrate, Senior Magistrate, Uganda
	1933-36	Puisne Judge, Tanganyika
	1936-45	Puisne Judge, Ceylon
	1945-51	Chief Justice, Jamaica
	1951-54	Chief Justice, Kenya
	1954-55	Judge of Appeal, West African Court of Appeal
HONOURS		Knight Bachelor, 1946

5. Sheridan, Sir Joseph Kt

BORN		1882
DIED		1964
NATIONALITY		Irish
EDUCATION		Castleknock College
		Trinity College Dublin BA
	1907	Called to the Bar, King's Inns
CAREER	1908-13	Assistant to the Attorney-General, Nyasaland (acted as Attorney-General and Puisne Judge)
	1913-20	Resident Magistrate, East Africa Protectorate (acted as Puisne Judge)

	1920-29	Puisne Judge, Kenya
	1929-34	Chief Justice, Tanganyika
	1934-46	Chief Justice, Kenya
COMMISSIONS	1918-19	Maasai Riot Claims Commission
HONOURS		Knight Bachelor, 1932

APPENDIX D

PART 3: PUISNE JUDGES OF KENYA, 1900-1963.

1. Bartley, Thomas Doveton Maxwell

BORN		1890
DIED		-
NATIONALITY		Irish
EDUCATION		Trinity College Dublin BA
		Barrister, England
CAREER	1937-39	Tanganyika
	1940-	Puisne Judge, Kenya

2. Bonham-Carter, Arthur Thomas

BORN		1869
DIED		1 July 1916
NATIONALITY		English
EDUCATION		Winchester College
		Cambridge BA
		Barrister, Inner Temple, 1904
CAREER	1894-00	Western Circuit
	1900-02	War Service, South African War
	1902-05	Resident Magistrate, Transvaal
	1905-	Puisne Judge, East Africa Protectorate

3. Bourke, Sir Paget John Kt SC

BORN		1906
DIED		1983
NATIONALITY		Irish
EDUCATION		Mount St Mary's College, Chesterfield
		Trinity College, Dublin BA LLB
		Barrister, King's Inn, 1928
		Barrister, Gray's Inn, 1957
CAREER	1928-33	Practice at the Bar
	1933-36	Legal Adviser and Crown Prosecutor, Seychelles (Member of Executive and Legislative Councils)
	1936-45	Chief Magistrate, Palestine (acted as President, District Court)
	1945-46	President, District Court, Palestine
	1946-55	Puisne Judge, Kenya
	1955-57	Chief Justice, Sierra Leone
	1957-60	Chief Justice, Cyprus
	1965	Acting Chief Justice, Gibraltar

	1965-70	Justice of Appeal, Court of Appeal for Bahamas, Bermuda and British Honduras (President of the Courts from 1970-75)
	1970-79	Justice of Appeal, Court of Appeal for Gibraltar
PUBLICATIONS		Digest of Cases, Seychelles
HONOURS		Knight Bachelor, 1957
		Senior Counsel, Irish Bar, 1961.

4. Cator, Sir Ralph Bertie Peter Kt

BORN		21 November 1861
DIED		29 July 1945
NATIONALITY		English
EDUCATION		Radley College
		Oxford BA
CAREER	1896-05	Puisne Judge, East Africa Protectorate
	1905-16	Judge, Supreme Court for the Ottoman Dominions
	1914-16	President, Prize Court of Egypt
	1915-16	Supreme Court of Egypt
	1916-31	President, International Mixed Court of Appeal in Egypt
HONOURS		Knight Bachelor, 1931

5. Connell, Charles Percy

BORN		1 October 1902
DIED		-
DIED		29 October 2002
NATIONALITY		English
EDUCATION		Charterhouse School
		Oxford BA
		Barrister, Lincoln's Inn, 1927
CAREER	1927-38	Practice at the Bar
	1938-39	Resident Magistrate, Kenya
	1939-42	War Service
	1942-46	British Military Administration (Legal and Judicial), Eritrea and Tripolitania
	1951-64	Puisne Judge, Kenya

6. Dalton, Philip Neale

BORN		30 June 1909
DIED		4 November 1989
NATIONALITY		English
EDUCATION		Downside School, Somerset
		Cambridge BA
		Barrister, Inner Temple, 1933

CAREER	1933-37	Practice at the Bar
	1937-39	Resident Magistrate, Gold Coast
	1939-45	War Service
	1945-51	Crown Counsel, Gold Coast
	1951-53	Solicitor-General, Fiji
	1953-56	Attorney-General, British Solomon Islands, and Legal Adviser, Western Pacific High Commission
	1957-63	Attorney General, Zanzibar
	1963-67	Puisne Judge, Kenya
COMMISSIONS	1970-82	Immigration Appeal Tribunal
HONOURS		Order of the Brilliant Star (Second Class), Zanzibar, 1963

7. Dickinson, Benjamin

BORN		-
DIED		-
NATIONALITY		English
EDUCATION		Barrister, Lincoln's Inn, 1904
CAREER		Transferred from Administrative Service
		Colonial Legal Service (served in Gold Coast and Cyprus)
	1930-34	Puisne Judge, Kenya

8. Edmonds, Edward Alfred Jubal

BORN		21 August 1907
SON OF		Edward Jubal Edmonds, Solicitor
DIED		15 April 1974
NATIONALITY		South African
EDUCATION		Hilton College, South Africa
		Natal University College, South Africa BA LLB
		Attorney of the Supreme Court of South Africa, 1933
		Advocate of the High Court of Tanganyika, 1934
		Advocate of the Supreme Court of South Africa, 1939
		Barrister, Gray's Inn, 1965
CAREER	1934-46	Practice at the Bar, Arusha
	1946-55	Resident Magistrate, Tanganyika
	1955-64	Puisne Judge, Kenya
	1965-69	Resident Judge, Sovereign Base Areas, Cyprus

9. Ehrhardt, Albert KC (Fiji)

BORN		1862
DIED		30 August 1929
NATIONALITY		English
EDUCATION		King Edward's High School, Birmingham

		Oxford BA
		Barrister, Inner Temple, 1889 (Studentship in Common Law)
CAREER	1889-1903	District Commissioner, Nigeria (served in a number of political and executive posts including Resident of Ibadan, Treasurer and Attorney General)
	1903-10	Attorney General. Fiji (acted as Chief Justice, Chief Judicial Commissioner of the Western Pacific and Deputy Governor)
	1910-14	Puisne Judge, East Africa Protectorate
PUBLICATIONS		Revised Edition of the Ordinances of Fiji
HONOURS		King's Counsel (Fiji), 1910

10. Farrell, Arthur Denis CMG QC (Malaya)

BORN		27 January 1906
DIED		18 December 1990
NATIONALITY		English
EDUCATION		St Paul's School, London
		Oxford BA
		Barrister, Middle Temple, 1937
CAREER	1929-41	School Teacher, Sedbergh School, Cumbria and Bradford Grammar School
	1941-46	War Service
	1947-51	Crown Counsel, Singapore
	1951-56	Legal Draftsman, Malaya
	1956-58	Solicitor-General, Malaya
	1958-69	Puisne Judge, Kenya (acted as Chief Justice)
COMMISSIONS	1974-78	Chairman, Medical Appeal Journals
HONOURS		Queen's Counsel (Malaya), 1957
		Commander of the Order of St Michael and St George, 1970

11. Harbord, Charles Derek Gardner

BORN		25 July 1902
DIED		26 September 1987
NATIONALITY		English
EDUCATION		Mount Radford School, Exeter
		St Michael's Theological College, Llandaff
		Barrister, Gray's Inn, 1925
		Advocate of the High Court of Ghana, 1959
CAREER	1925-35	Church of England Vicar
	1935-40	Practice at the Bar
	1940-44	District Magistrate, Colonial Legal Service, Gold Coast
	1944-46	Registrar of the High Court, Northern Rhodesia
	1946-53	Resident Magistrate, Northern Rhodesia
	1953-59	Puisne Judge, Tanganyika
	1959-61	Senior Lecturer, Ghana School of Law
	1961-74	Returned to the Church of England

PUBLICATIONS	1951	Manual for Magistrates, Northern Rhodesia
	1954	Law Reports, Northern Rhodesia
	1960	Law Reports, Ghana

12. Horne, Sir William Kenneth Kt

BORN		1883
DIED		8 February 1959
NATIONALITY		English
EDUCATION		-
CAREER	1913-15 and 1919-25	Practice at the Bar
	1915-18	War Service
	1925-29	Chief Justice, Tonga (acted as Chief Justice, Fiji, and Chief Judicial Commissioner, Western Pacific)
	1929-33	Judge, The Gambia
	1937-42	Puisne Judge, Straits Settlements
	1942-44	War Service, East Africa
	1944-48	Puisne Judge, Kenya
	1948-55	Speaker of Legislative Assembly, Kenya
PUBLICATIONS		Revised Editions of the Laws of Tonga, 1928
HONOURS		Knight Bachelor, 1954

13. Lucie-Smith, Sir John Alfred Kt OBE

BORN		27 January 1888 (son of Sir Alfred Lucie-Smith, former Chief Justice of Trinidad)
DIED		17 April 1969
NATIONALITY		English
EDUCATION		Stonyhurst College, Lancashire
		Barrister, Middle Temple, 1910
		Advocate and Solicitor, Straits Settlements, 1910
CAREER	1910-14	Practice at the Bar, Straits Settlements
	1914-19	War Service
	1920-23	Assistant Magistrate, Trinidad
	1923-27	President of the District Court, Cyprus
	1927-29	Puisne Judge, Cyprus
	1929-31	Puisne Judge, Trinidad and Tobago
	1931-46	Puisne Judge, Kenya (acted as Chief Justice of Kenya and Zanzibar)
COMMISSIONS		President, Trade Disputes Tribunals, and Chairman, Compensation Board, Kenya
HONOURS		Officer of the Order of the British Empire, 1919
		Knight Bachelor, 1949

14. MacDuff, John Levy MC

BORN		11 December 1905
DIED		11 July 1963
NATIONALITY		New Zealand
EDUCATION		Wellington College, New Zealand
		Victoria University College, New Zealand BA LLM
CAREER	1939-45	War Service
	1945-53	Senior Magistrate, Fiji
	1953-62	Puisne Judge, Kenya
	1962-63	Chief Justice, Fiji
HONOURS		Military Cross

15. Madan, C.B. QC (Kenya)

BORN		1912
DIED		-
NATIONALITY		Kenyan
EDUCATION		Barrister, Middle Temple
CAREER	1961-86	Puisne Judge, Kenya
	1986-88	Chief Justice, Kenya

16. Maxwell, Thomas Doveton

BORN		-
DIED		8 November 1946
NATIONALITY		English
EDUCATION		Blundell's School, Tiverton
		Oxford BA
		Barrister, Gray's Inn
CAREER	1902-17	Civil Service, Nigeria
	1917-24	Puisne Judge, Kenya
	1924-28	Puisne Judge, Nigeria

17. Mayers, Thomas Henry QC (Jamaica)

BORN		5 November 1907
DIED		20 September 1970
NATIONALITY		English
EDUCATION		Harrison College, Barbados
		Cambridge MA LLB
		Barrister, Middle Temple, 1929

CAREER	1929-36	Practice at the Bar, Oxford Cicuit
	1936-40	Resident Magistrate, Jamaica
	1940-43	Solicitor-General, Jamaica
	1943-52	Attorney-General and Member of Executive and Legislative Councils, Jamaica
	1952-64	Puisne Judge, Kenya
COMMISSIONS	1947	Legal Adviser, Caribbean Closer Association Conference
HONOURS		King's Counsel (Jamaica), 1943

18. Miles, Basil Raymond CBE

BORN		10 October 1906
DIED		25 March 1984
NATIONALITY		English
EDUCATION		Harrow School
		Oxford BA
		Barrister, Inner Temple, 1931
CAREER	1931-46	Practice at the Bar
	1946-53	Resident Magistrate, Tanganyika
	1953-57	Puisne Judge, Gambia
	1957-67	Puisne Judge, Kenya
COMMISSIONS	1967-74	Chairman, Industrial Tribunals
HONOURS		Commander of the Order of the British Empire, 1968

19. Modera, F S

BORN		1887
DIED		-
NATIONALITY		English
EDUCATION		Barrister, Inner Temple
CAREER	1948-49	Resident Magistrate, Kenya
	1949-51	Puisne Judge, Kenya

20. Murphy, John Pelly

BORN		19 March 1909
DIED		20 July 1979
NATIONALITY		Irish
EDUCATION		Mount St Mary's College
		Trinity College Dublin
		Barrister, King's Inn
CAREER	1936-47	Assistant Crown Solicitor, Hong Kong
	1947-50	Attorney-General, the Gambia
	1950-56	Attorney-General, Zanzibar
	1956-64	Puisne Judge, Kenya

	1966-69	Assistant Legal Adviser, Foreign Office
	1969-72	Resident Judge of British Sovereign Base Areas of Akrotiri and Dhekelia, Cyprus

21. Nageon de Lestang, Sir Marie Charles Emmanuel Clement Kt

BORN		20 October 1910
DIED		11 November 1986
NATIONALITY		Seychellois
EDUCATION		St Louis College, Seychelles
		King's College, London LLB (Hons)
		Barrister, Middle Temple, 1931
CAREER	1936-39	Legal Adviser and Crown Prosecutor, Seychelles
	1939-44	Acting Chief Justice, Seychelles
	1944-47	Resident Magistrate, Kenya
	1947-56	Puisne Judge, Kenya
	1956-58	Federal Justice, Federal Supreme Court of Nigeria
	1958-60	Chief Justice, High Court of Lagos
	1958-64	Chief Justice, High Court of Southern Cameroons
	1964-66	Justice of Appeal, East African Court of Appeal
	1966-69	Vice-President, East African Court of Appeal
HONOURS		Knight Bachelor, 1960

22. Pickering, George Hunter

BORN		7 November 1877
DIED		13 April 1971
NATIONALITY		English
EDUCATION		Forest School
		Oxford BA
		Barrister, Inner Temple, 1903
CAREER	1903-07	Western Circuit
	1907-10	Practice at the Bar, Mombasa
	1910-15	Town Magistrate, East Africa Protectorate
	1915-17	Acting Judge, East Africa Protectorate
	1917-28	Puisne Judge, East Africa Protectorate
	1928-32	Chief Justice, Zanzibar

23. Rudd, Geoffrey Burkitt

BORN		29 May 1908
DIED		26 December 1975
NATIONALITY		Irish
EDUCATION		St Columba's College, Dublin
		Trinity College Dublin
		Barrister, King's Inns, 1932
CAREER	1936-44	Resident Magistrate, Kenya
	1945-51	Puisne Judge, Aden (acted as Chief Justice)
	1951-69	Puisne Judge, Kenya

24. Stephens, John Edward Robert

BORN		9 January 1869
DIED		11 February 1941
NATIONALITY		English
EDUCATION		St Olave's School, York
		Royal University of Ireland BA
		Barrister, Middle Temple, 1894
CAREER	1894-11	Midland Circuit
	1911-22	Magistrate, Zanzibar
	1922-25	Puisne Judge, Jamaica
	1925-31	Puisne Judge, Kenya
PUBLICATIONS		Collection of the Decision of the Supreme Court, Jamaica
		Digest of Public Health Cases
		Editor of Manual of Naval Law and Court-Martial Procedure

25. Templeton, James Stanley

BORN		24 January 1906
DIED		24 March 1977
NATIONALITY		Northern Irish
EDUCATION		Bangor Grammar School, Northern Ireland
		Barrister, Lincoln's Inn
CAREER	1936-49	Shorthand Writer in the Supreme Court, Kenya
	1949-55	Crown Counsel, Kenya
	1955-57	Senior Crown Counsel, Kenya
	1957-64	Puisne Judge, Kenya

26. Thacker, Ransley Samuel QC (Fiji)

BORN		17 March 1891
DIED		27 December 1965
NATIONALITY		English
EDUCATION		Dulwich College, London
		Barrister, Gray's Inn, 1913
CAREER	1913-23	Practice at the Bar
	1923-30	City of London
	1930-33	Chief Justice, St Vincent
	1933-38	Attorney-General, Fiji
	1938-52	Puisne Judge, Kenya
HONOURS		King's Counsel (Fiji), 1937

27. Thomas, Sir Samuel Joyce Kt

BORN		-
DIED		19 January 1952
NATIONALITY		English
EDUCATION		King's College, London BA
		Barrister, Middle Temple, 1898
CAREER	1906-16	Chairman, Tatsfield Parish Council
	1910-14	Prospective Unionist candidate. Contested Stoke-on-Trent seat, (1910)
	1914-15	Practice at the Bar, West Midland and Oxford Circuit
	1915-19	War Service
	1919-23	Chief Justice, St Vincent
	1923-29	Puisne Judge, Trinidad and Tobago
	1929-33	Puisne Judge Kenya
	1933-	Chief Justice, Malaya
COMMISSIONS	1923-29	Chairman, Oil and Water Board, Trinidad and Tobago
HONOURS		Knight Bachelor, 1935.

28. Trevelyan, Edward (Born Isaac Rosen)

BORN		1915
DIED		-
NATIONALITY		English
EDUCATION		Solicitor, England, 1940
		Barrister, Gray's Inn, 1954
		Advocate of Supreme Court of Kenya
CAREER	1952-63	Resident Magistrate, Kenya
	1963-82	Puisne Judge, Kenya

APPENDIX D

PART 4: CHIEF JUSTICES OF TANGANYIKA, 1920-1961

1. Abrahams, Sir Sidney Solomon Kt PC QC (Gold Coast)

BORN		11 February 1885
DIED		14 May 1957
NATIONALITY		English
EDUCATION		Bedford Modern School
		Cambridge BA LLB
		Barrister, Middle Temple, 1909
CAREER		
	1915-20	Town Magistrate, Zanzibar
	1920-21	Advocate-General, Baghdad, Mesopotamia
	1921-22	President, Civil Courts, Basrah, Mesopotamia
	1922-25	Attorney-General, Zanzibar
	1925-28	Attorney-General, Uganda
	1928-33	Attorney-General, Gold Coast
	1933-34	Chief Justice, Uganda
	1934-36	Chief Justice, Tanganyika
	1936-39	Chief Justice, Ceylon
COMMISSIONS		Member of the Judicial Committee of the Privy Council
		Senior Legal Assistant, Commonwealth Relations Office and Colonial Office
HONOURS		King's Counsel (Gold Coast), 1930
		Privy Councillor, 1941
		Knight Bachelor, 1946

2. Carter, Sir William Morris Kt CBE

BORN		9 December 1873
DIED		22 September 1960
NATIONALITY		English
EDUCATION		King's School, Canterbury
		Oxford BA (Certificate of Honour) BCL
		Barrister, Lincoln's Inn, 1899 (Prize in Constitutional Law and Legal History)
CAREER	1902-03	Registrar and Magistrate , East Africa Protectorate
	1903-12	Puisne Judge, Uganda
	1912-20	Chief Justice, Uganda
	1920-24	Chief Justice, Tanganyika
COMMISSIONS		Chairman, Land Commission, Southern Rhodesia
		Chairman, Cotton Enquiry Commission, Uganda
		Chairman, Kenya Land Commission
		Member, Palestine Royal Commission

		Colonial Law Research Group
PUBLICATIONS		Laws of the Uganda Protectorate, 1910
HONOURS		Commander of the Order of the British Empire, 1918
		Knight Bachelor, 1919
		Commander of the Order of the Crown of Belgium, 1921

3. Cox, Sir Herbert Charles Fahie Kt QC (Nigeria)

BORN		1893
DIED		21 September 1973
NATIONALITY		English
EDUCATION		Barrister, 1915
CAREER	1913-19	British Guiana Police
	1920-25	Assistant Attorney-General, British Guiana
	1925-29	Attorney-General, Bahamas
	1929-33	Attorney-General, Gibraltar
	1933-35	Solicitor-General, Nigeria
	1935-46	Attorney-General, Nigeria
	1946-52	Chief Justice, Northern Rhodesia
	1952-56	Chief Justice, Tanganyika
	1956-61	Chief Justice of the High Commission Territories (Basutoland, Bechuanaland and Swaziland)
COMMISSIONS	1946-47	Chairman, Northern Rhodesia Police Commission of Inquiry
	1956	Chairman, Commission of Inquiry into Provincial Disturbances, Sierra Leone
		King's Counsel (Nigeria), 1936
HONOURS		Knight Bachelor, 1946

4. Dalton, Sir Llewelyn Chisholm Kt

BORN		21 April 1879
DIED		4 January 1945
NATIONALITY		English
EDUCATION		Marlborough College
		Cambridge BA
		Barrister, Gray's Inn, 1901
		Advocate, Orange River Colony, 1903
CAREER	1901-02	Legal Assistant, Land Settlement Department, Orange River Colony
	1902-10	Assistant Resident Magistrate, Orange River Colony
	1910-19	Registrar, British Guiana
	1919-23	Puisne Judge, British Guiana (acted as Solicitor-General, Attorney General and Chief Justice)
	1923-25	Puisne Judge, Gold Coast
	1925-36	Puisne Judge, Ceylon
PUBLICATIONS		Law Reports, Statutory Rules and Orders, Civil Law, and Digest of Case Law of British Guiana

		Assistant Editor of Burge's Colonial and Foreign Laws
HONOURS		Knight Bachelor, 1938

5. Davies, Sir Edward John Kt QC (Singapore)

BORN		20 February 1898
DIED		5 October 1969
NATIONALITY		Welsh
EDUCATION		Llandovery College, Wales
		University of Wales
CAREER	1915-18	War Service
	1922-27	Practice at the Bar, South Wales Circuit
	1927-33	Crown Counsel, Kenya
	1933-35	Senior Crown Counsel, Gold Coast
	1935-38	Solicitor General, Trinidad and Tobago
	1938-41	Deputy Legal Adviser, Malaya
	1941-42	Solicitor General, Singapore
	1942-45	Interned by Japanese
	1946-55	Attorney-General, Singapore (Member of Executive and Legislative Council)
	1955-60	Chief Justice, Tanganyika
HONOURS		King's Counsel (Singapore), 1948
		Knight Bachelor, 1958

6. Paul, Sir George Graham Kt

BORN		15 November 1887
DIED		22 January 1960
NATIONALITY		Scottish
EDUCATION		Clifton Bank School, Dundee
		St Andrews MA
		Edinburgh LLB
		Advocate, Scots Bar, 1910
		Advocate, Nigerian Bar, 1914
CAREER	1910-14	Practice at the Scots Bar
	1914-17	War Service, Nigeria
	1920-33	Nominated Member of the Nigerian Legislative Council
	1933-39	Puisne Judge, Nigeria
	1939-45	Chief Justice, Sierra Leone
	1945-51	Chief Justice, Tanganyika
	1955	Justice of Appeal, Appeal Court for High Commission Territories (Basutoland, Bechanaland and Swaziland)
PUBLICATIONS	1933-39	Editor, Nigeria Law Reports
HONOURS		Knight Bachelor, 1943

7. Russell, Sir Alison KCMG Kt

BORN		1875
DIED		19 September 1948
NATIONALITY		English
EDUCATION		Rugby School
		Cambridge BA LLB
		Barrister, Inner Temple, 1900
CAREER	1900-06	Practice at the Chancery Bar
	1906-12	Attorney-General, Uganda (acted as Chief Secretary)
	1912-24	Attorney-General, Cyprus
	1924-29	Chief Justice, Tanganyika
COMMISSIONS	1934	Legal Adviser, Malta
	1935	Chairman , Commission of Inquiry in Disturbances in the Copperbelt, Northern Rhodesia
	1938	Member, Palestine Partition Committee
	1941	Ministry of Information (Commercial Relations)
	1942	Chairman, Commission of Inquiry, Bahamas
	1943	Assistant Legal Adviser, Colonial Office
	1945	Chairman, Commission of Inquiry, Gold Coast
PUBLICATIONS		Statutes, Legislative Drafting and Forms of Cyprus
		Handbook for Magistrates, Cyprus
		Statutes, Tanganyika
		Handbook for Magistrates, Tanganyika
HONOURS		Knight Bachelor, 1928
		Knight Commander of the Order of St Michael and St George, 1943

8. Webb, Ambrose Sir Henry Kt QC (Ireland)

BORN		13 August 1882
DIED		19 May 1964
NATIONALITY		Irish
EDUCATION		Clifton College
		Oxford BA (Classical Scholar)
		Barrister, King's Inn (Victoria Prize and John Brooke Scholarship)
CAREER	1909-21	Practice at the Irish Bar
	1921-33	President, District Court of Samaria, Palestine
	1931-33	Legal Assessor, Department of Development, Palestine
	1933-37	Puisne Judge, Kenya
	1938-39	Chief Justice, Sierra Leone
	1940-45	Chief Justice, Tanganyika
HONOURS		King's Counsel (Ireland), 1920
		Knight Bachelor, 1941

APPENDIX D

PART 5: JUDGES OF THE HIGH COURT OF TANGANYIKA, 1920-1961

1. Abernethy, James Smart

BORN		3 October, 1907
DIED		25 May 1976
NATIONALITY		Scottish
EDUCATION		Sedbergh Junior School, Yorkshire
		Aberdeen Grammar School
		University of Aberdeen MA
		University of Edinburgh LLB
CAREER	1934	Interim Procurator-Fiscal, Scotland
	1934	Private practic, Montrose, Scotland
	1936	Legal Adviser, Commissioner of Lands and Protector of labour, North Borneo
	1941	Food Controller, North Borneo
	1942	War service
	1947	Commissioner of Lands, North Borneo
	1948	Circuit Magistrate and Sessions Judge, North Borneo
	1949	Resident Magistrate, Tanganyika
	1951-58	Puisne Judge, Tanganyika

2. Alexander, Gilchrist Gibb

BORN		1871
DIED		1952
NATIONALITY		Scottish
EDUCATION		Glasgow Academy
		Glasgow University MA
		Barrister, Middle Temple
CAREER	1907-14, 1916-20	Chief Police Magistrate and Attorney-General, Fiji and Western Pacific; Chief Justice, New Hebrides
	1914-16	War Service
	1920-25	Puisne Judge, Tanganyika

3. Bates, Isaac Granger

BORN		1886
DIED		-
NATIONALITY		-
CAREER	1913-20	British Solomon Islands
	1920-22	Fiji
	1922-34	Tanganyika

	1934-37	Puisne Judge, Tanganyika

4. Bell, Sir Edward Peter Stubbs Kt QC (Malaya)

BORN		1902
DIED		1957
NATIONALITY		English
CAREER	1920-31	Secretariat, Antigua and Leeward Islands
	1931-34	Magistrate, Dominica
	1934-35	Magistrate, St Kitts and Nevis
	1935-38	Attorney-General, St Lucia
	1938-41	Crown Counsel, Palestine
	1941-45	Legal Secretary, Malta
	1946-49	Solicitor-General, Malaya
	1949-51	Puisne Judge, Tanganyika
	1951-55	Chief Justice, British Guiana
	1955-57	Chief Justice, Northern Rhodesia
HONOURS		King's Counsel (Malaya), 1948
		Knight Bachelor, 1954

5. Cluer, Reginald Montagu

BORN		1891
DIED		-
NATIONALITY		English
EDUCATION		Oxford BA
		Barrister, Inner Temple, 1915
CAREER	1915-32	Practice at the Bar
	1932-39	Colonial Legal Service: Jamaica, Malaya
	1939-44	Puisne Judge, Tanganyika

6. Gower, Ivon Llewellyn Owen

BORN		1874
DIED		28 July 1955
NATIONALITY		English
EDUCATION		Barrister, Lincoln's Inn, 1904.
CAREER	1904-08	Practice at the Bar
	1908-14	Conveyancer, Land Department, East Africa Protectorate
	1914	Legal Assistant, Land Department, East Africa Protectorate
	1914-17	War Service
	1917-26	Solicitor-General, East Africa Protectorate/Kenya (acted as Attorney-General)
	1926-32	Puisne Judge, Tanganyika (acted as Chief Justice)

7. Knight-Bruce, Gordon Kenneth

BORN		1891
DIED		-
NATIONALITY		English
EDUCATION		Oxford BA
CAREER	1936-38	Puisne Judge, Tanganyika

8. Knight, Clifford

BORN		1909
DIED		1959
NATIONALITY		South African
EDUCATION		Diocesan College, Cape Town
		Oxford, BA
CAREER	1935-40	Magistrate, Tanganyika
	1940-44	War Service
	1947-48	Assistant Judge, Nyasaland
	1948-51	Puisne Judge, Tanganyika
	1951-	Puisne Judge, Singapore

9. Law, Sir Eric John Ewan Kt

BORN		1913
DIED		1988
NATIONALITY		English
EDUCATION		Wrekin College
		Cambridge BA
		Barrister, Middle Temple, 1936
CAREER	1939-42	War Service
	1944-53	Crown Counsel, Nyasaland
	1953-55	Resident Magistrate, Tanganyika
	1955-56	Senior Resident Magistrate, Tanganyika
	1956-58	Assistant Judge, Zanzibar
	1958-64	Puisne Judge, Tanganyika
	1965-83	Judge of Appeal, Court of Appeal for Eastern Africa
HONOURS		Knight Bachelor, 1979

10. Lloyd-Blood, Lancelot Ivan Neptune KC (Cyprus)

BORN		1896
DIED		1951
NATIONALITY		Irish

EDUCATION		Tonbridge School
		Trinity College Dublin BA
		King's Inns, 1920
CAREER	1915-20	War Service
	1920-24	Registrar, Kenya
	1924-32	Assistant Attorney-General, Nyasaland
	1932-36	Solicitor-General, Palestine
	1936-40	Attorney-General, Cyprus
	1940-50	Puisne Judge, Tanganyika
HONOURS		King's Counsel (Cyprus), 1938

11. Lowe, Sir Albert George Kt

BORN		1901
DIED		1967
NATIONALITY		New Zealand
EDUCATION		Auckland Grammar School
		Auckland University College
		Barrister and Solicitor, 1928
CAREER	1938-40	Legal Secretary, Tonga
	1940-45	War Service
	1945-49	Crown Counsel, Kenya
	1949-53	Legal secretary, Malta
	1953-58	Puisne Judge, Tanganyika
	1958-61	Chief Justice, Fiji
COMMISSIONS	1961	Foreign Compensation Commission
HONOURS	1961	Knight Bachelor, 1961

12. Mahon, Sir Gerald MacMahon Kt

BORN		1904
DIED		1982
NATIONALITY		English
EDUCATION		Dulwich College
		Oxford BA
CAREER	1936-49	Resident Magistrate, Tanganyika
	1949-59	Puisne Judge, Tanganyika
	1959-64	Chief Justice, Zanzibar
COMMISSIONS	1964-76	Medical Appeal Tribunal
HONOURS		Knight Bachelor, 1962

13. McDougall, John Henry Gordon

BORN		1889
DIED		1969
NATIONALITY		English
EDUCATION		Marlborough College
		Oxford BA
		Barrister, Middle Temple, 1921
CAREER	1911-21	Assistant District Commissioner, Uganda
	1921-31	Assistant Political Officer, Tanganyika
	1931-35	Puisne Judge, Tanganyika
	1935-42	Retired
	1942-46	Chief Justice, Gibraltar
	1946-47	Chief Legal Adviser, General Headquarters

14. McRoberts, Bertram Alexander Kirkpatrick

BORN		1888
DIED		-
NATIONALITY		Scottish
EDUCATION		Barrister, Middle Temple, 1917
		Lower Swahili Examination, 1910
CAREER	1909-10	Inspector of Veterinary Police, East Africa Protectorate
	1910	Assistant Inspector of Police
	1910-11	Inspector of Police
	1911-15	Assistant Superintendent of Police
	1915-20	War Service
	1920-21	Superintendent of Police
	1921-26	Resident Magistrate, Zanzibar
	1929-37	Police Magistrate, Sierra Leone
	1937-45	Puisne Judge, Tanganyika

15. Mosdell, Lionel Patrick

BORN		1912
DIED		-
NATIONALITY		English
EDUCATION		Abingdon School
		Oxford BA
		Solicitor, England
		Barrister, Gray's Inn, 1952
CAREER	1939-45	War Service
	1946-50	Registrar, Northern Rhodesia
	1950-56	Resident Magistrate, Northern Rhodesia
	1956-60	Senior Resident Magistrate, Northern Rhodesia

	1960-64	Puisne Judge, Tanganyika
	1966-72	Puisne Judge, Kenya

16. Muir Mackenzie, Kenneth James

BORN	1882	
DIED	1931	
NATIONALITY		Scottish
EDUCATION		St Paul's School
		Cambridge BA
		Barrister, Middle Temple, 1907
CAREER	1914-19	War Service
	1919-21	Crown Counsel, Kenya (acted as Solicitor-General)
	1922-27	Attorney-General, Fiji
	1927-31	Puisne Judge, Tanganyika

17. Murphy, Richard Holmes

BORN		1915
DIED		1994
NATIONALITY		English
EDUCATION		Charterhouse School
		Cambridge BA LLB
		Barrister, Inner Temple, 1939
CAREER	1939-45	War Service
	1948-51	Resident Magistrate, Tanganyika
	1951-55	Chief Registrar, Gold Coast
	1955-57	Senior Magistrate, Gold Coast
	1957-60	Puisne Judge, Ghana
	1960-64	Puisne Judge, Tanganyika

18. Reed, Haythorne

BORN		1873
DIED		1934
NATIONALITY		English
EDUCATION		Bath College
		Cambridge BA
CAREER	1897-02	Practice at the Bar
	1902-08	South African Constabulary
	1909-10	Second Magistrate, Zanzibar
	1910-24	First Magistrate, Zanzibar (acted as Puisne Judge and Chief Justice)
	1925-27	Puisne Judge, Tanganyika (acted as Chief Justice)

	1927-34	Puisne Judge, Nyasaland
COMMISSIONS	1929	North Nyasaland Commission

19. Simmons, Ernest Bernard QC (Seychelles)

BORN		1913
DIED		1988
NATIONALITY		English
EDUCATION		Barrister, Gray's Inn, 1936
CAREER	1946-49	Assistant Attorney-General, Gibraltar
	1949-52	Attorney-General, Seychelles
	1952-58	Puisne Judge, Mauritius
	1958-61	Puisne Judge, Tanganyika
HONOURS	1949	King's Counsel (Seychelles), 1949

20. Stuart, William Hemming

BORN		1883
DIED		-
NATIONALITY		South African
EDUCATION		South African College Schools
		Oxford BA
		Barrister, Middle Temple
		Advocate of the Supreme Court of South Africa
CAREER	1914-15	War Service
	1916-37	Legal Adviser to the South African Government
	1938-40	Chief Justice, Tonga
	1940-43	Puisne Judge, British Guiana
	1943-48	Puisne Judge, Tanganyika

21. Walker, Robert

BORN		1881
DIED		-
NATIONALITY		-
CAREER	1915-21	Colonial Service, Uganda
	1921-25	Puisne Judge, Tanganyika

22. Weston, L.

BORN		1909
DIED		-
NATIONALITY		English
EDUCATION		Oxford BA
		Barrister, England
CAREER	1961-	Puisne Judge, Tanganyika

23. Williams, David John

BORN		1914
DIED		-
NATIONALITY		English
EDUCATION		Lancing College
		Oxford BA
		Barrister, Inner Temple, 1939
CAREER	1939-45	War Service
	1946-51	Practice at the Bar
	1951-56	Resident Magistrate, Tanganyika
	1956-60	Senior Resident Magistrate, Tanganyika
	1960-62	Puisne Judge, Tanganyika
	1966-79	Lord Chancellor's Office

24. Wilson, Sir Mark Kt

BORN		1896
DIED		1956
NATIONALITY		Irish
EDUCATION		Kilkenny College
		Mountjoy School, Dublin
		Trinity College, Dublin BA LLB
		Barrister, King's Inns, 1924
CAREER	1924-26	Cadet Officer, Administrative Service, Tanganyika
	1926-35	Resident Magistrate, Uganda
	1935-36	Senior Resident Magistrate, Uganda
	1936-48	Puisne Judge, Tanganyika
	1948-56	Chief Justice, Gold Coast
COMMISSIONS	1940-47	Makerere College Council
	1946-47	Arusha-Moshi Lands Commission
	1954	Gold Coast Judicial Service Commission
HONOURS		Trinity College, Dublin LLD *jure dignitatis*, 1949
		Knight Bachelor, 1950